

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

WALT FAMULAR, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

WHIRLPOOL CORPORATION,

Defendant.

CASE NO. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Walt Famular (“Plaintiff”), by his attorneys, makes the following allegations pursuant to the investigations of counsel and upon information and belief, except as to the allegations specifically pertaining to himself or his counsel, which are based on personal knowledge:

NATURE OF THE ACTION

1. This is a class action against defendant Whirlpool Corporation (“Whirlpool” or “Defendant”) for misrepresenting the water and energy efficiency of Maytag Centennial washing machines, model numbers MVWC6ESWW0, MVWC6ESWW1, and MVWC7ESWW0 (the “Mislabeled Washing Machines”), by promoting them as ENERGY STAR®-qualified and labeling them with the ENERGY STAR® logo.¹ In fact, the Mislabeled Washing Machines do

¹ The MVWC6ESWW1 is the basic model. The MVWC6ESWW0 adds an EMI/RFI filter to reduce electrical and radio interference. It shares the same ENERGYGUIDE label as the MVWC6ESWW1. The MVWC7ESWW0 adds a glass top for cosmetic purposes. Otherwise, the interior and exterior parts are virtually identical. These three models share, among other parts, the same motor, cabinet, electric wiring, control knobs, timer knobs, wash basket, agitator,

not meet the ENERGY STAR® efficiency standards, and consume significantly more water and energy than their labels state.

2. ENERGY STAR®-qualified washing machines are required by the U.S. Department of Energy (“DOE”) to exceed minimum standards for water and energy efficiency. Qualified washing machine models use approximately 50% less water and 37% less energy than standard models. According to Whirlpool’s own 2010 Product Catalogue, the ENERGY STAR® program “mean[s] the appliance exceeds the federal minimum efficiency standards as set forth by the Environmental Protection Agency and the U.S. Department of Energy, helping to save money on utility bills.” *See* Exhibit A. ENERGY STAR®-qualified appliances are more expensive than standard models, but they come with the promise of reduced water and energy bills that, over time, will generate enough savings to recoup the higher price. This is the fundamental bargain the ENERGY STAR® program offers: consumers pay a higher up-front purchase price but save more on water and energy bills (“Utility Bills”) over time using the product.

3. As a result, there is tremendous demand by consumers for ENERGY STAR®-qualified appliances and products that bear the distinctive ENERGY STAR® mark. According to the DOE’s General Counsel, Scott Blake Harris, “The ENERGY STAR® label is a critical tool for consumers looking to save energy and money with their appliances.” In fact, “[t]he ENERGY STAR mark ranks among the highest level of influence on product purchase among all consumer emblems, similar in ranking to the Good Housekeeping Seal.”

4. An independent study commissioned by Whirlpool confirms that the “majority of consumers look for [the] ENERGY STAR label when making purchase decisions.” A 2012

drive tube, pump, and clutch. Furthermore, they have identical energy usage, water usage, and load capacity.

National Association of Home Builders (“NAHB”) Home Trends & Buyer Preferences survey also acknowledged that ENERGY STAR® appliances were the feature most desired by homebuyers, picked by 94% of respondents.

5. To capitalize on this demand, Whirlpool engaged in a long-term advertising campaign in which Whirlpool utilized various forms of media to consistently and uniformly promote the Mislabeled Washing Machines as ENERGY STAR®-qualified. For example, Whirlpool’s national print media campaign featured the ENERGY STAR® mark, along with energy efficiency messaging, and reached over 550 million consumers in 2009 alone.

6. Defendant’s promotion and sale of the Mislabeled Washing Machines as ENERGY STAR®-qualified, when in fact they are not, is false and misleading, rendering the promised benefits of efficiency and Utility Bill savings illusory. For Class members who purchased the Mislabeled Washing Machines, the promised savings from reduced Utility Bills never came. Instead, Class members were hit with a costly double-whammy: a higher up-front price due to the substantial price premium that ENERGY STAR® washing machines command in the marketplace, followed by higher Utility Bills over the washing machines’ useful life, since its actual energy consumption and water usage is substantially higher than what was promised. Each Class member paid a higher initial price for their washing machine and will pay higher Utility Bills every month – month after month and year after year – for as long as the washing machine remains in use.

7. Plaintiff seeks relief in this action individually, and as a class action on behalf of similarly situated purchasers of the Mislabeled Washing Machines, for breach of express warranty; unjust enrichment; violation of New York General Business Law § 349; and violation of New York General Business Law § 350.

THE PARTIES

8. Plaintiff Walt Famular is a citizen of New York, residing in Stony Point, New York. Mr. Famular is a police officer by trade.

9. Defendant Whirlpool is a Delaware corporation with its principal place of business in Benton Harbor, Michigan. Whirlpool is one of the world's leading manufacturers of home appliances, with annual revenues of approximately \$18.8 billion in 2013. Whirlpool represents that it "is an industry leader in developing high-performance appliances that help conserve the earth's resources and allow homeowners to use resources more efficiently." Whirlpool's Chairman and CEO, Jeff M. Fettig, boasts on Whirlpool's corporate website, "At Whirlpool Corporation, we take our environmental responsibilities very seriously. Just as we have taken a global approach to our home appliance business, we believe our world's environmental issues, such as climate change, must be addressed in a similarly comprehensive way. This is why we continue to develop innovative products that minimize their impact on the environment while making our consumers' lives easier." Since 1975, Whirlpool has played a leadership role in crafting every major appliance efficiency regulation, "including a leading role in setting the ENERGY STAR program standards."

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one class member is a citizen of a state different from Defendant.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Whirlpool does business throughout this district, a substantial part of the events giving rise to Plaintiff's claims took place within this district, and because Plaintiff resides within this district.

FACTS COMMON TO ALL CLAIMS

A. The ENERGY STAR® Promise And Its Significant Effect On Consumers

12. The Energy Policy and Conservation Act of 1975 ("EPCA"), 42 U.S.C. §§ 6291, *et seq.*, established an energy conservation program for major household appliances. EPCA was amended by the National Energy Conservation Policy Act of 1978 ("NECPA"), Pub. L. 95-619, to, among other things, give the DOE authority to regulate the minimum water and energy efficiency of several products, including residential clothes washers. Further amendments to EPCA in the National Appliance Energy Conservation Act of 1987 ("NAECA"), Pub. L. 100-12, established minimum water and energy efficiency standards for clothes washers. In totality, the EPCA, NAECPA, and NAECA give the DOE authority to establish water and energy efficiency standards for clothes washers, "promote Energy Star compliant technologies," and "preserve the integrity of the Energy Star label." 42 U.S.C. § 6294a.

13. ENERGY STAR® is a government-backed voluntary program, designed to "identify and promote energy-efficient products in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of, or other forms of communication about, products and buildings that meet the highest energy conservation standards." *See* 42 U.S.C. § 6294a. The program is jointly administered by the DOE and the Environmental Protection Agency ("EPA").

14. The ENERGY STAR® program is not a regulatory program;² rather, it consists of voluntary partnerships (with licensing agreements) between the DOE/EPA and industry participants that commit to manufacture products that meet the very highest standards of water and energy efficiency. This licensing agreement, embodied in the standard partnership agreement (“Partnership Agreement”) provides that both “parties concur that this agreement is wholly voluntary and may be terminated by either party at any time, and for any reason, with no penalty.” Furthermore, the Partnership Agreement states that the signatory or “partner will not construe, claim, or imply that its participation in the ENERGY STAR program constitutes federal government approval, acceptance, or endorsement of anything other than Partner’s commitment to the program. Partner understands its participation in the ENERGY STAR program does not constitute federal government endorsement of Partner or its buildings, homes, products, services, or industrial facilities.”

15. To qualify for the ENERGY STAR® program, residential washing machines, including the Mislabeled Washing Machines, must be at least 37% more energy efficient than the minimum energy efficiency standard mandated by federal law, plus they must meet stringent energy and water efficiency criteria including specified Modified Energy Factor (“MEF”) and Water Factor (“WF”) levels. MEF is a comprehensive measure of energy efficiency that considers the energy used for washing, including the energy used to operate the washing machine and to heat the water. The higher the MEF, the more efficient the product. WF is a measure of water efficiency and is calculated as gallons of water used per cubic foot of capacity. The lower the WF, the more efficient the clothes washer. On March 7, 2008, the DOE released updated criteria (effective July 1, 2009) increasing efficiency criteria by five percent (5%) over

² This is in stark contrast to the ECPA, which imposes *mandatory* minimum energy-efficiency standards on certain products.

the prior level. Under the updated criteria, ENERGY STAR®-qualified clothes washers must have an MEF of 1.8 or greater ($MEF \geq 1.8$) and a WF of 7.5 or lower ($WF \leq 7.5$). The ENERGY STAR® website's "for consumers" page provided this same specification information to consumers.³

16. Since ENERGY STAR® is widely recognized as the preeminent brand for energy efficient products, participation in the ENERGY STAR® program has a significant impact on the marketability of products.

17. The most significant tool used in the ENERGY STAR® program is the ENERGY STAR® label that incorporates the ENERGY STAR® certification mark. All appliances with the ENERGY STAR® label are required to meet the strict energy efficiency guidelines set by the EPA and the DOE, which require the Mislabeled Washing Machines to use at least 37% less energy than the maximum permitted under the NAECA, as well as up to 50% less water than non-certified models.

18. The message and promise conveyed by the ENERGY STAR® logo is that the appliance is ENERGY STAR®-qualified and thus complies with the strict water and energy efficiency level required by the ENERGY STAR® program. Because the product is ENERGY STAR® qualified, it will enable consumers to maximize their water and energy savings while helping to protect the environment. The national retailers that dominate the appliance market rely extensively on ENERGY STAR®-related promotions, as well as the distinctive logo, to sell appliances and bring consumers to their stores.

³ See

http://www.energystar.gov/products/specs/system/files/Clothes_Washers_Program_Requirements.pdf



19. The campaign to promote ENERGY STAR® has continued for well over a decade. To promote the message of water and energy efficiency and savings, the EPA launched a broad outreach campaign in 1997, encouraging consumers to look for the distinctive ENERGY STAR® label. The campaign prominently mentioned the environmental benefits of the ENERGY STAR® program, but the focus was still on the financial savings that consumers could realize through superior energy efficiency. According to the EPA, the first consumer campaign had three key messages:

ENERGY STAR saves you money and protects the environment. Use of qualified products in your home can mean up to 30 percent savings.

The second price tag. Products have two price tags: the purchase price plus the cost of electricity needed to use the product over its lifetime.

An easy choice. Either the product is energy efficient because it displays the ENERGY STAR label, or it isn't.

20. To facilitate the guiding principle of easily identifying efficient appliances that offer savings on utility bills, the EPA set up specific promotional and labeling guidelines for ENERGY STAR®-qualified appliances and the use of its distinctive ENERGY STAR® mark as a label. Specifically, the publication titled "Using the Energy Star Identity to Maintain and Build Value" provides examples, guidelines and recommendations by the EPA "on how to get the greatest value of the Certification Mark," *available at*

<http://www.energystar.gov/ia/partners/logos/downloads/BrandBook508r.pdf>. For one, the mark “may never be associated with products ... that do not qualify as ENERGY STAR.” *Id.* at 4.0.

21. These marketing and educational efforts have culminated in one of the most recognizable, global symbols for energy efficiency. Scott Blake Harris, General Counsel for the DOE, has stated that “[t]he ENERGY STAR® label is a critical tool for consumers looking to save energy and money with their appliances.”

22. In fact, the ENERGY STAR® label was *specifically engineered* to convey a simple message to consumers: that a given appliance meets rigorous energy efficiency standards. A product either meets ENERGY STAR® criteria, or it does not. In the words of Whirlpool’s Vice President of Government Relations, Tom Catania, “ENERGY STAR Makes it Simple” – it is “[a]warded to products that *meet [] strict efficiency criteria set by the U.S. Department of Energy and the U.S. Environmental Protection Agency*” (emphasis added).

23. Maura Beard, a former director of strategic communication at the EPA for the ENERGY STAR® Program, stated that:⁴

The value of Energy Star for consumers is the fact that it’s binary – that yes/no part of Energy Star, I think is a really important ... attribute of the brand. So, when a consumer’s picking a dishwasher, they’re not looking at a sticker trying to decide, “Ok, this is a C on an ABCDEF ... and trying to decide whether that’s how that value of a C might relate to all the other attributes of, of the appliance... *[W]ith Energy Star, it’s a yes/no, it has it or it doesn’t, and when it has it, it means one thing* ... and I think that has tremendous value for the mainstream marketplace. (emphasis added).

24. For instance, in a January 2006 letter to the Federal Trade Commission (“FTC”), Whirlpool wrote that “Whirlpool and the Association of Home Appliance Manufacturers (AHAM) conducted a consumer research study where a nationally representative sample of 1,000 respondents compared the current [ENERGYGUIDE] label with three alternatives... The

⁴ Pew Center on Global Climate Change Best Practices Conference, April 7, 2010.

purpose of the study was to ... determine which label design which, with an ENERGY STAR® logo added, ***most clearly conveyed high efficiency of that appliance***. The goal was to determine which label provided the consumer with the best information on the relative and absolute energy consumption of a particular model appliance. It was equally important that the label not create the impression that it included information on anything other than energy consumption; that is, that it not imply anything about product quality, product performance or any other non-energy characteristic.” (bold and italicized emphasis added, underline in original).

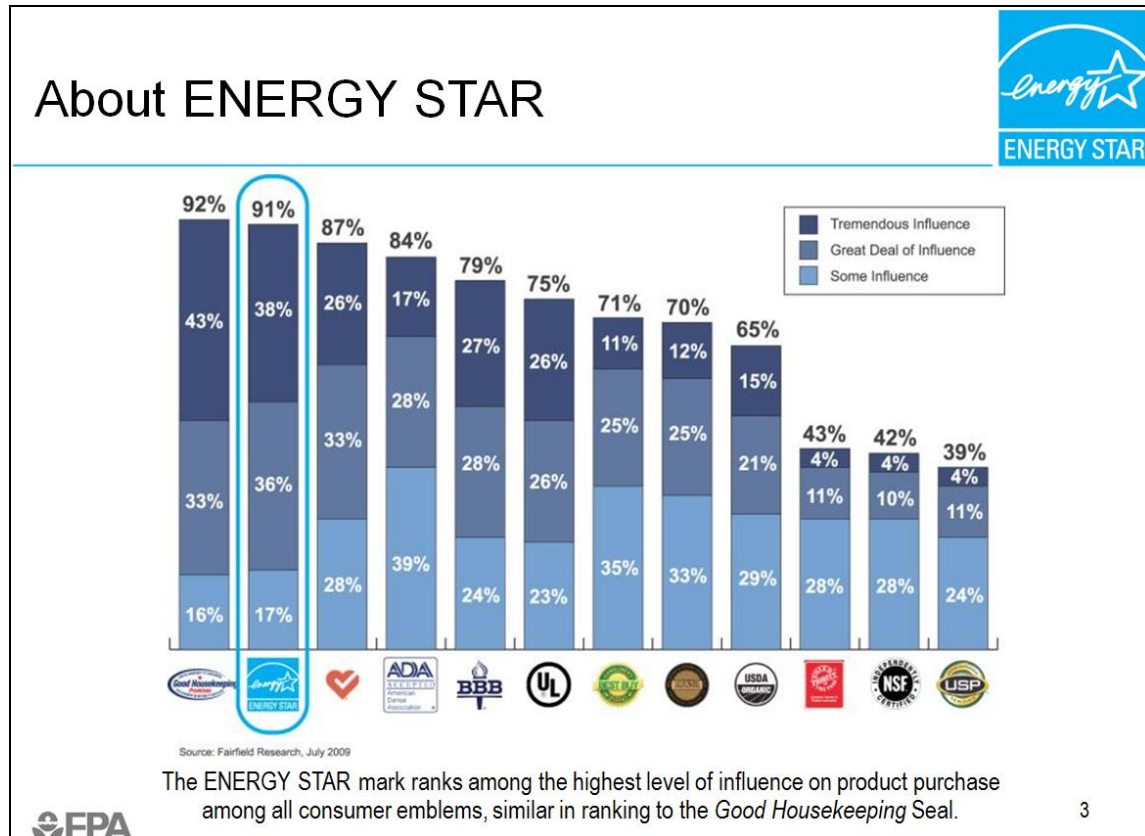
25. The ENERGY STAR® label is more than a symbol. It is “extremely successful as an informational device.” Declaration of Catherine Zoi, Assistant Secretary, Office of Energy Efficiency and Renewable Energy, *LG Electronics U.S.A., Inc. v. DOE, et al.*, No. 09-2297-JDB (D.C. Dec. 23, 2009), Dkt. No. 10-7, at ¶ 19. It sends an unequivocal message to consumers: the labeled product is ENERGY STAR® qualified – it meets the mandatory minimum efficiency standard required by the ENERGY STAR® program.

26. The DOE and EPA have found that “[s]ubstantial portions of U.S. households in the surveyed population recognize, understand, and are influenced by the ENERGY STAR label.” This is supported by a prominent national survey conducted in 2011, which found that 85% of households had at least a general understanding of the label’s purpose, including 75% that had a “high understanding.”

27. That same survey found the ENERGY STAR® logo material, influencing the purchasing decisions of 88% of households that recognized it, including 76% whose purchase decisions were influenced “very much” or “somewhat.”

28. In September 2010, the EPA prepared a PowerPoint presentation entitled “Energy Star® Sales Associate Training – Clothes Washers.” The EPA’s PowerPoint presentation

emphasizes that the ENERGY STAR® logo helps consumers easily identify energy-efficient products and that “[t]he ENERGY STAR mark ranks among the highest level of influence on product purchase among all consumer emblems, similar in ranking to the *Good Housekeeping Seal*.” The PowerPoint presentation also included the following slide showing that the ENERGY STAR® label has an influence on 91% of consumers:



29. Moreover, Whirlpool’s own internal survey data supports a similar finding of materiality. On March 14, 2011, Whirlpool issued a press release stating: “According to a Whirlpool Corporation survey ... energy efficiency is more important than ever in the purchase decision of consumers shopping for major appliances. The majority of U.S. consumers (72%) said they actively look for the ENERGY STAR® label when making purchase decisions.” Similarly, on November 5, 2004, Whirlpool submitted a position paper to the DOE stating that

“consumers recognize the ENERGY STAR mark as an indication that they will incur lower operating costs with these products.”

30. Earlier this year, on the 20th anniversary of the ENERGY STAR® program, the EPA issued a book entitled “Energy Star® Products – 20 Years of Helping America Save Energy, Save Money and Protect the Environment.” In the book, the EPA stated:

Twenty years later, ENERGY STAR is a *global symbol for energy efficiency*. EPA recognizes ENERGY STAR products in more than 60 categories. More than 80 percent of U.S. consumers recognize and understand the label, collectively buying an estimated 300 million ENERGY STAR qualified products every year. (emphasis added)

31. In that book, Whirlpool’s Government Relations Senior Specialist Nick Gillespie stated:

Throughout the last 20 years, ENERGY STAR has been the market transformation program catalyzing manufacturers to introduce eco-efficient appliances into the market place that significantly benefit the consumer and the environment. Although ENERGY STAR is a voluntary program, it did not take long for Whirlpool Corporation to see the potential in and help formulate what has been *one of the most recognizable brands of its kind....* Our ongoing commitment to the growth, success and integrity of the ENERGY STAR partnership has been a strong source of pride for Whirlpool Corporation for the last 20 years. (emphasis added)

32. In that same publication, Marc Hoffman, Executive Director of the Consortium for Energy Efficiency (“CEE”), stated:

When the federal government came up with the concept for ENERGY STAR and then extended it to appliances, CEE carefully deliberated before incorporating the brand into its own plans for advancing efficiency. Over time the decision of CEE members to adopt ENERGY STAR as their marketing platform for energy efficiency has proven to be a great one. Surveys show that ENERGY STAR is an important endorsement label for consumers and that it plays an equally important role as a marketing platform for myriad energy efficiency programs.

EPA maintains a brand that simply and credibly identifies cost-effective-energy-saving opportunities that do not compromise amenity or reliability. In turn, CEE members actively promote the ENERGY STAR in their energy-savings programs,

thereby simplifying energy efficiency decision-making for their customers and helping to grow the brand. ENERGY STAR also presents an excellent rallying point for energy efficiency organization and industry to work cooperatively. We consider ENERGY STAR to be America's most trusted and recognized brand for energy efficiency.

33. A 2012 NAHB Home Trends & Buyer Preferences survey⁵ acknowledged that ENERGY STAR® appliances were the feature most desired by homebuyers, picked by 94% of respondents.

34. There is no doubt that appliance manufacturers such as Whirlpool consider the ENERGY STAR® label to be a "promise" of "savings" and "energy efficiency."

35. For example, on September 5, 2008, Whirlpool issued a press release titled "Whirlpool Corporation Leads Industry in Energy Efficiency; Company's ENERGY STAR(R) Qualified Appliances Deliver Promised Savings." The article, released in response to reports of competitors exceeding reported energy ratings, was released to "reassure consumers that all of its French Door Bottom-Mount refrigerators – sold under the Whirlpool, Maytag, KitchenAid and Amana brands – have legitimately earned the ENERGY STAR credential by rigorously following the required energy testing procedures." Furthermore, Phil Pejovich, vice president of refrigeration, Whirlpool North America, stated: "We want consumers to know that when they purchase French Door Bottom-Mount refrigerators – and all ENERGY STAR qualified appliances by Whirlpool – they can do so with the confidence that they will deliver energy savings as communicated in-store, on the product and in the product literature." Mr. Pejovich further added:

Consumers who proactively seek ENERGY STAR qualified products are being deprived of the opportunity to effectively comparison shop based on energy consumption, not because of a problem with the test procedure, but by the failure of some manufacturers to follow it.

⁵ According to the NAHB, these results were obtained by surveys performed by NAHB and Better Homes and Gardens.

We also are concerned for companies that purchase products from these manufacturers and re-sell them under their own brand names. They may be unwittingly depriving consumers of the energy savings and environmental benefits they expect of genuine ENERGY STAR qualified refrigerators.

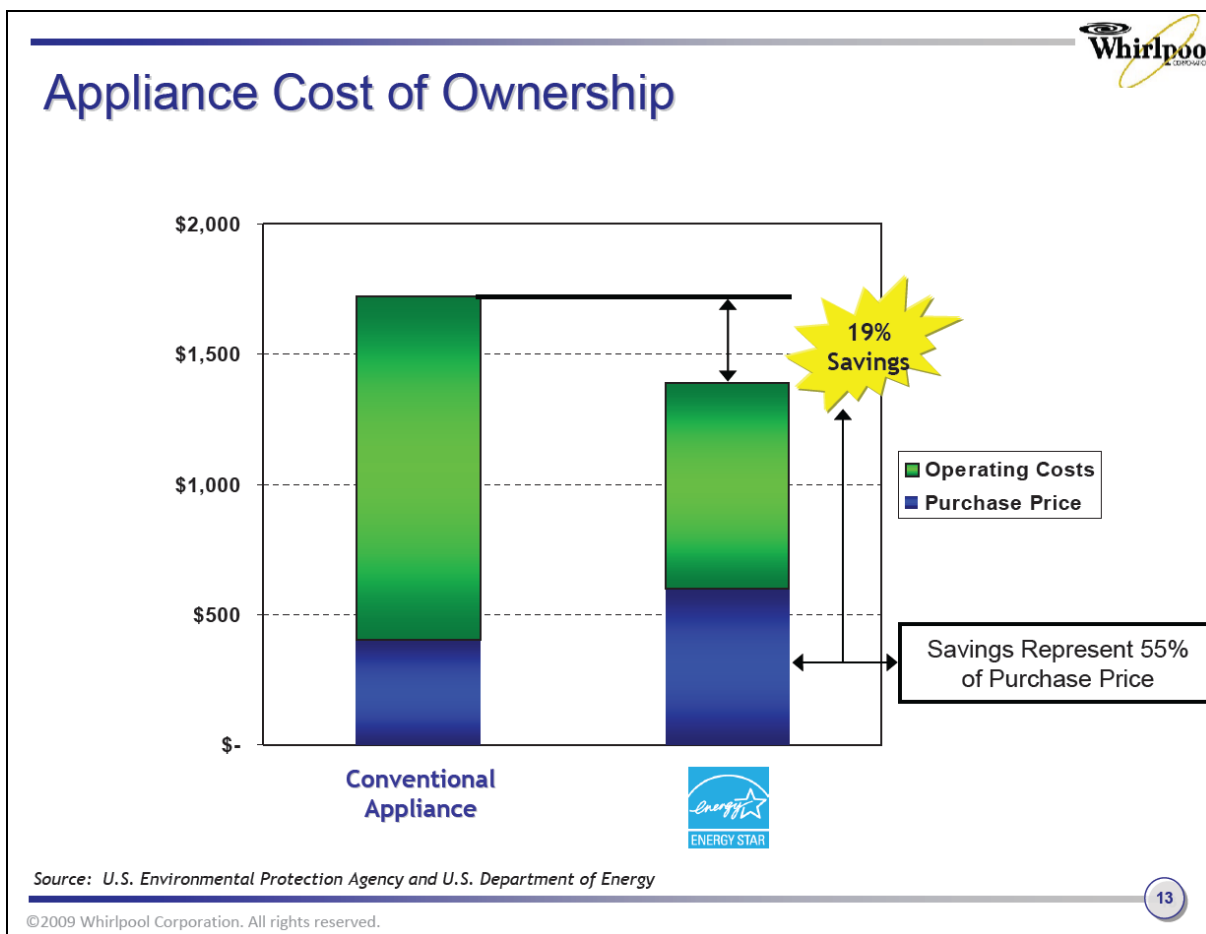
36. That same day, Michael A. Todman, President of Whirlpool North America, participated in a Morgan Keegan Equity Conference and stated: “***ENERGY STAR qualifications essentially say that there are significant savings from a consumer perspective.*** So against the conventional appliances for electricity, okay, with an appliance that’s ENERGY STAR qualified is on average about a 31% savings.” (emphasis added). He further declared: “If you put it into real terms, there is a slight premium that consumers will pay for [ENERGY STAR®] appliances. But they’re looking for pay back and right now on average the pay back period for [ENERGY STAR®] qualified appliances is around three, a little over three years, 3.4 years.”

37. Similarly, on March 9, 2009, Jeff M. Fettig, Chairman and Chief Executive Officer of Whirlpool, attended a Raymond James Institutional Investors Conference and boasted:

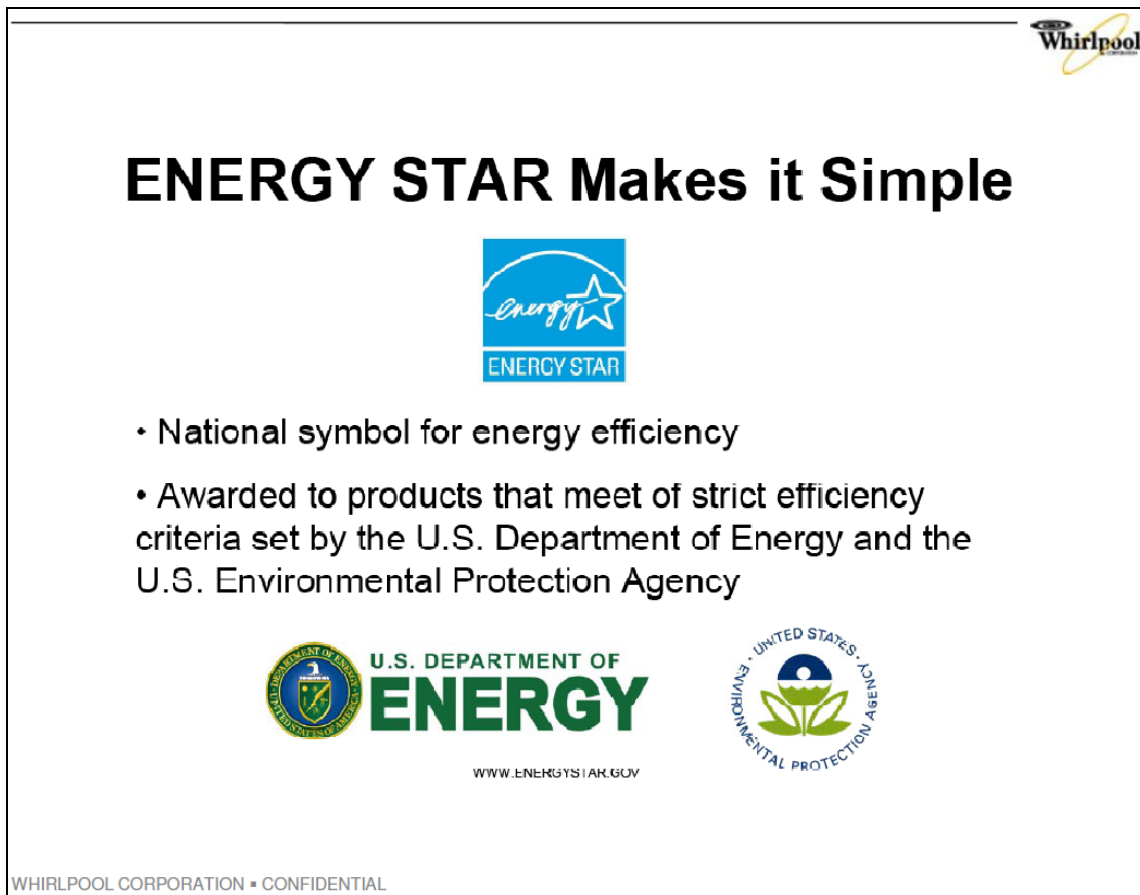
We’ve been really championing the ENERGY STAR program and fundamentally reducing the energy efficiency in appliances. We think it’s also a compelling value story, and you’ll see a lot of this at our point of sale, in stores on our products about the value opportunity for consumers.

This is just an example of a typical product today in the marketplace. You can see the conventional appliance, which is what I would call a non-ENERGY STAR appliance. Although the initial purchase price is less, the cost of ownership over a 10-year cycle is higher. The product on the right is a comparable product with energy efficiency ratings. You pay a little bit more on the front end, but you save about 20% over the life of the product. And if you compare that to an existing product that’s over 10 years old, then it’s more than 50%. It’s a dramatic opportunity for consumers to save and we’re seeing very strong interest in our energy offerings in the marketplace today.

38. In his presentation, Mr. Fettig showed several slides regarding Whirlpool’s participation in the ENERGY STAR® program and the savings consumers could expect from purchasing ENERGY STAR®-qualified products in comparison to conventional appliances. Mr. Fettig’s slides included the ENERGY STAR® logo ***to represent ENERGY STAR® qualified appliances:***

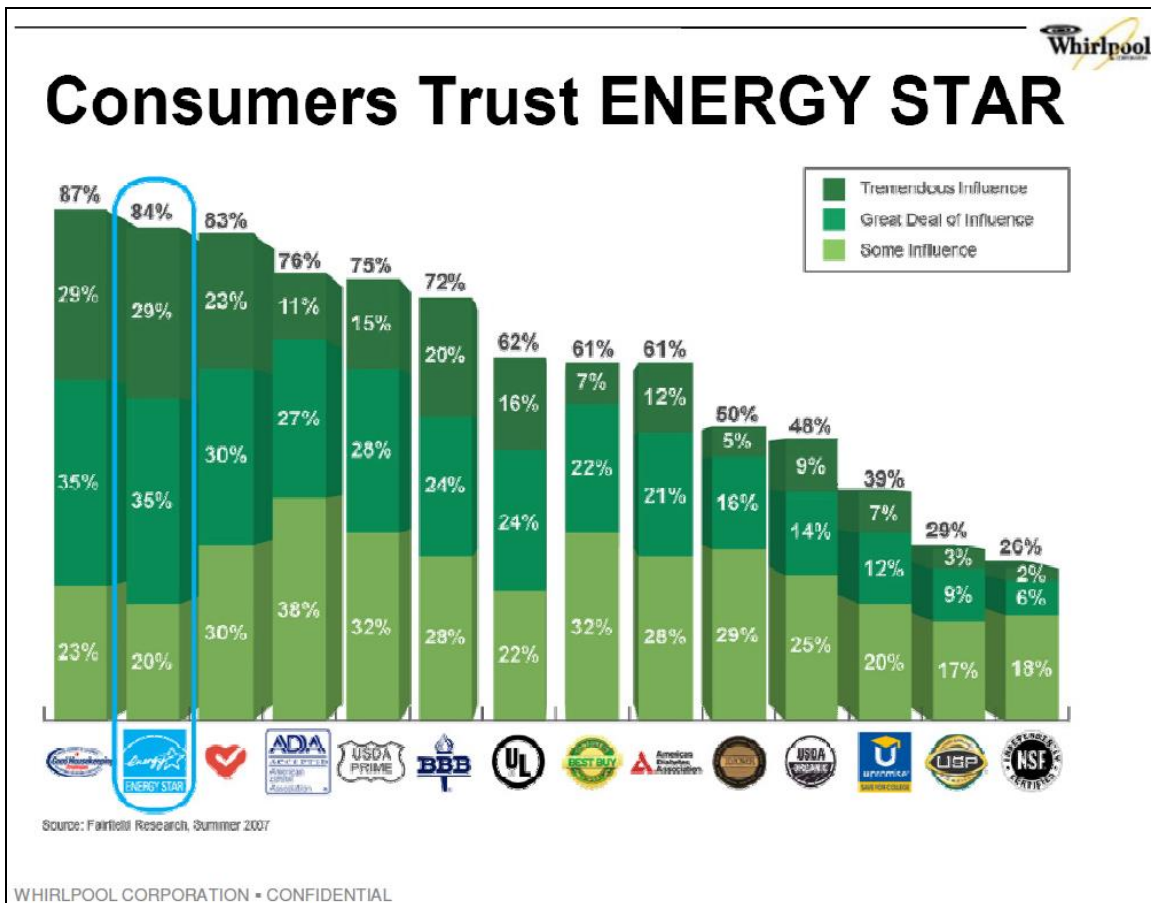


39. On April 7, 2010, Tom Catania, Whirlpool’s Vice President for Government Relations, participated in the Pew Center on Global Climate Change Best Practices Conference. Mr. Catania made a presentation entitled “Increasing the Value of Energy Efficiency to the Consumer: The Case of Major Home Appliances.” In the presentation, Mr. Catania extolled the virtues of the ENERGY STAR® program and its distinctive and easily recognizable mark. For example, Mr. Catania presented a slide titled “ENERGY STAR Makes it Simple.” The “Confidential” slide, reproduced below, included the ENERGY STAR® logo and touts the importance of the logo as the “National symbol for energy efficiency.”



40. The “Confidential” slide further states that the ENERGY STAR® mark is “[a]warded to products that meet [] strict efficiency criteria set by the U.S. Department of Energy and the U.S. Environmental Protection Agency.”

41. Mr. Catania also acknowledged that 84% of consumers “trust” the ENERGY STAR® program and its distinctive symbol. Another “Confidential” slide accompanying Mr. Catania’s presentation is reproduced below:



42. Participation in the ENERGY STAR® program has a significant impact on the marketability of products. The message conveyed by the ENERGY STAR® logo is that the consumer can maximize his or her savings while helping to protect the environment. The national retailers that dominate the appliance market rely extensively on ENERGY STAR®-related promotions to bring consumers to the store and sell washing machines.

B. Whirlpool's Reliance On The ENERGY STAR® Logo In The Marketing And Sale Of The Mislabeled Washing Machines

43. Whirlpool sought to capitalize on this tremendous demand for ENERGY STAR® products by conducting a long-term campaign over several years, in several forms of media, in which Whirlpool consistently and uniformly promoted its products, including the Mislabeled

Washing Machines, as ENERGY STAR®-qualified. Whirlpool advertised and identified these models as ENERGY STAR® qualified products by prominently displaying the ENERGY STAR® symbol in promotional materials, including print, internet, and other media; product literature including spec sheets; and by attaching the ENERGY STAR® logo on the Mislabeled Washing Machines themselves.

44. Whirlpool's Chairman and CEO, Jeff M. Fettig has boasted "[w]e've been really championing the ENERGY STAR program and fundamentally reducing energy efficiency in appliances. We think it's a compelling value story, and you'll see a lot of this at our point of sale, in stores on our products about the value opportunity for consumers."

45. In fact, Whirlpool has received numerous awards from the EPA in connection with its marketing and promotion of ENERGY STAR®-qualified products, including seven consecutive ENERGY STAR® awards for "Sustained Excellence." For example, in 2008 Whirlpool announced that it had received the ENERGY STAR® Award for "Sustained Excellence" for certain key accomplishments, including "integrat[ing] its ENERGY STAR commitment throughout operation by continuously promoting the benefits of ENERGY STAR to its trade partners, employees, and consumers." Key achievements include, among others:

- Offering a full line of appliances to meet ENERGY STAR® criteria, and that are sold across the nation under high-profile brand names, including Whirlpool, Maytag, Kenmore, and KitchenAid.
- Demonstrating exceptional leadership with regard to ENERGY STAR® training efforts.
- Emphasizing ENERGY STAR® in all internal training materials.
- Making ENERGY STAR® a major focus of external trainings, including outreach to Whirlpool's national retail partners.

46. In 2009, Whirlpool announced that it had received the Sustained Excellence award for the fourth year in a row for "continuously promot[ing] the benefits of ENERGY STAR

to its trade partners, employees, and consumers.” As an active ENERGY STAR® partner since 1998, Whirlpool received the award for the following key accomplishments:

- Developing ENERGY STAR®-themed national promotions, which were featured in Whirlpool’s Resource Innovations newsletter and on the ENERGY STAR® Special Deals Finder.
- Offering a full line of appliances that meet ENERGY STAR® criteria and are sold across the nation under various high-profile brand names including Whirlpool, Maytag, Kenmore, KitchenAid, Amana, Gladiator, and others.

47. In 2010, Whirlpool announced that the “Company [was] being recognized for its exceptional efforts to manufacture, market, and promote ENERGY STAR qualified products.” Whirlpool noted that it received the ENERGY STAR® Award for “Sustained Excellence” for certain key accomplishments, including:

- Delivering ENERGY STAR® training and marketing to retailers, housing industry representatives, utility companies, and consumers. Whirlpool’s 2009 national print media featured creative executions that included the ENERGY STAR® mark, along with energy and water efficiency messaging that reached over 550 million consumers.
- Educating and training more than 61,000 national retailer sales associates on the benefits of ENERGY STAR®-qualified products.

48. In 2011, Whirlpool announced that it was again awarded the ENERGY STAR® Sustained Excellence recognition for “its outstanding efforts to design, produce, and market ENERGY STAR qualified appliances.” Additional key accomplishments include:

- Providing a hands-on training and learning experience for retail associates in fall 2010. During a 7-week tour in more than 70 cities across the country, associates learned the latest product innovations and key selling points for ENERGY STAR qualified appliances.

49. In 2012, Whirlpool announced that it was again awarded the ENERGY STAR® Sustained Excellence award. According to the EPA, in “2011, Whirlpool stepped up its longstanding commitment to design, produce, and market ENERGY STAR qualified appliances”

and was recognized for “its outstanding efforts to design, produce, and market ENERGY STAR qualified appliances.” Additionally, Whirlpool secured over one billion ENERGY STAR® impressions in a wide variety of media including point-of-purchase education and advertising.

Specifically, key accomplishments include:

- Offering training and continued education on ENERGY STAR® and energy efficiency for trade customers, designers, key influencers, and sales associates at its innovative World of Whirlpool experience center.
- Promoting ENERGY STAR® through public relations outreach efforts – including press release distribution, targeted media outreach, experimental events, and point-of-purchase education and advertising – achieving more than 1.3 billion impressions in 2011.

50. Moreover, in September 2008, after news broke that appliance made by a competing manufacturer had been found to consume far more energy than their reported energy ratings, Whirlpool issued a press release assuring consumers that all of its refrigerators “have legitimately earned the ENERGY STAR credential by rigorously following the required energy testing procedures.” The press release further stated that “Whirlpool Corporation asserts that all of its ENERGY STAR qualified products are in full compliance with ENERGY STAR requirements.” *See*

<http://investors.whirlpoolcorp.com/common/mobile/iphone/releasedetail.cfm?ReleaseID=531663&CompanyID=ABEA-5DXEK8&mobileid=#> (last visited July 28, 2014).

51. Similarly, Whirlpool aggressively marketed the Mislabeled Washing Machines based on their ENERGY STAR® qualification. Whirlpool conducted a systematic, broadly disseminated, sustained, widespread, multi-year advertising campaign, misrepresenting that the Mislabeled Washing Machines were ENERGY STAR® qualified. Whirlpool advertised and identified these models as ENERGY STAR®-qualified products by prominently displaying the ENERGY STAR® symbol in promotional materials and product literature, including print,

internet, and other media, and by attaching or affixing the ENERGY STAR® logo on each and every Mislabeled Washing Machine.

52. For example, in Whirlpool’s “Know Before You Go” buying guide for washers and dryers, Whirlpool emphasizes the materiality of the energy and water usage of a washer in the decision making of consumers. Moreover, Whirlpool represents that products which are ENERGY STAR®-qualified save consumers money through lower usage costs.

3. KNOW WHAT COUNTS

WHAT ARE YOU PAYING FOR?

Here are a few of the features that will contribute to the cost of your new laundry pair:

Washer:

- High Efficiency
- Super Capacity Sizes
- Water Level & Balance Sensors
- Steam Cycles

Dryer:

- Noise Reduction Packages
- Wrinkle Reduction Options
- Moisture-Sensing Cycles
- Steam Cycles


An average family will use their laundry pair multiple times a week, but the cost of use is something that many people forget to consider. Older laundry pairs may require more water and energy, meaning an energy efficient one may actually save you money over its lifespan!

DID YOU KNOW?

- Standard washers use 40 gallons of water while many ENERGY STAR® qualified washers use less than half that amount.*
- Washers and dryers made before 1999 may not meet current Department of Energy usage guidelines.

*Sourced from: <http://www1.eere.energy.gov/consumer/tips/laundry.html>

LOOK TO SAVE MONEY IN THE LONG HAUL WITH:

- o High Efficiency washers that use less water and energy.
- o Dryers with moisture sensors to shorten drying times and extend the life of your clothes.
- o  An ENERGYSTAR® qualified model. These units are 25% more efficient and reduce usage costs.
- o An extended warranty. Most models come with a 1-year warranty.

MAYTAG® KNOW BEFORE YOU GO
PAGE 2 OF 3

<http://www.hustedmaytagappliance.com/WashDrybuyguide.pdf>

53. Moreover, in promotional brochures or print ads for the MVWC6ESWW printed in the spring of 2009, reproduced below, “NEW! ENERGY STAR® Qualification” is listed as the first feature of the product, along with an oversized image of the distinctive ENERGY STAR® logo alongside a photo of the model. According to the promotional brochure, “[t]his 4.0 Cu. Ft. I.E.C. capacity washer pays for itself in just over 6 years” and “[s]ave[s] money on utility bills while getting excellent cleaning results...”



NEW!
ENERGY STAR® Qualification
 This 4.0 cu. ft. I.E.C. capacity washer pays for itself in just over 6 years.*
 Save money on utility bills while getting excellent cleaning results, even in large loads.

*Compared to pre-2004 conventional washers, based on a 10-year life.



Maytag® Commercial Technology (MCT)
 Centennial® laundry pairs bring long-lasting, commercial-grade components to your home. With MCT, the washer transmission features parts that have been tested to twice the life.**

**Components tested to 20 years include drive shaft, spin gear and synthetic oil.



3x3 Spray System
 New spray technology with Auto Load Sensing gives exceptional cleaning performance from every angle. 3x3 uses 3 spray jets to wash, rinse and repeat to fight tough stains using less water.

Centennial® Laundry Pair

MVWC6ESWW
WASHER

MEDC700V (Electric)
MGDC700V (Gas)
DRYER

Spring 2009

<http://insideadvantage.com/assets/pdfs/cms/MVWC6ESWW.pdf>

54. Similarly, a print ad for the MVWC6ESWW displayed in the April 13, 2010 issue of *Broadcaster Press* by retailer Larry's Appliance, reproduced below, prominently displays the ENERGY STAR® logo to tout energy and water savings. The ad, which includes an oversized image of the distinctive ENERGY STAR® logo superimposed on the Mislabeled Washing Machine, states the washer "Pays For Itself In Just Over 6 Years!":

ENERGY STAR

CASH NOW!

SHOP TODAY AND SAVE



SAVE NOW ON

ENERGY STAR®

QUALIFIED APPLIANCES!

Hurry, Limited Time Offers!



Get Up To A

\$500

MasterCard® PrePaid Card*

rebate by mail with the purchase of qualifying Maytag® Appliances April 1 to April 30, 2010.

*Mail-in offer only. See store for complete details. Offer good on select Maytag® appliances. Void where prohibited by law. Cards are issued by Citibank, N.A. pursuant to a license from MasterCard International Incorporated. MasterCard is a registered trademark of MasterCard International Incorporated. Prepaid Card can be used everywhere Debit MasterCard Cards are accepted.



ESTATE SUPER CAPACITY TOP LOAD WASHER & EXTRA-LARGE CAPACITY ELECTRIC DRYER
#ETW4400WQ #EED4100SQ

FOR THE PAIR
\$578



ECO-SAVINGS
This Washer Pays For Itself In Just Over 6 Years!

Based On Lifetime Water & Energy Savings.

MAYTAG® TOP-LOAD WASHER & ELECTRIC DRYER

- Maytag® Commercial Technology
- Auto Load Sensing
- #MVWC6ESWW
- GentleBreeze™ Drying System
- #MEDC400VW

FOR THE PAIR
\$978 OR LESS!

Optional tower sold separately

MAYTAG WASHERS - BETTER BUILT TO CLEAN YOUR TOUGHEST LOADS



MAYTAG® PERFORMANCE SERIES FRONTLOAD WASHER & ELECTRIC DRYER

- Maytag® Commercial Technology
- SensiCare™ Wash System #MHWE450WW
- IntelliDry® Steam Sensor Drying
- SuperSize Capacity Plus #MEDE500VW

MAYTAG

PERFORMANCE SERIES

FOR THE PAIR
\$1998

- \$250

MASTERCARD PREPAID CARD*

YOUR COST
\$1748

AFTER REBATE
Offer Good: 4/1-4/30



MAYTAG® BRAVOS™ TOP-LOAD WASHER & ELECTRIC DRYER

- Maytag® Commercial Technology
- Superior Vibration Control
- #MVWB850WQ
- IntelliDry® Sensor • 9 Drying Cycles
- #MEDB850WQ



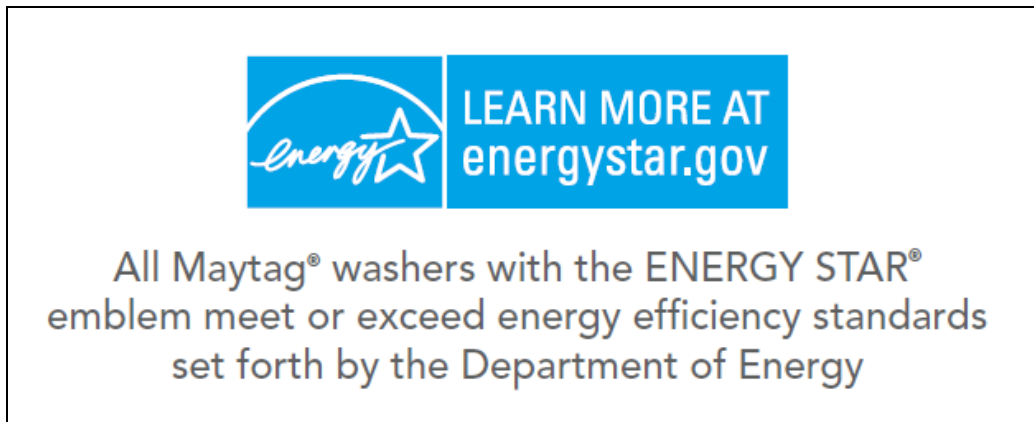
EXCELLENCE IN APPLIANCE RETAILING

Replacing your old appliances with models that have earned the **ENERGY STAR®** is the smart choice. **ENERGY STAR** qualified appliances save energy, save you money on utility and water costs, and help fight global warming.



WHY BUY HERE?

55. Additionally, the 2009 Maytag Laundry or product catalogue (2009 Product Catalogue) is replete with references to and images of the distinctive ENERGY STAR® logo. For example, an introductory page at the beginning of the 2009 Product Catalogue, titled “Pick the pair that meets your needs,” prominently displays the following representation:



56. Further, the 2009 Product Catalogue repeatedly touts that the Mislabeled Washing Machines are ENERGY STAR® qualified, which results in substantial energy and water saving benefits. For example, under the heading “Is This Product Right for You”, Whirlpool claims the Mislabeled Washing Machines use “65% less water and 49% less energy.”

Is this product right for you?

<p>Was your previous top load laundry pair built to last with commercial-grade parts?</p> <p>Centennial® laundry pairs feature Maytag® Commercial Technology (MCT), which is a series of long-lasting, commercial-grade components for your home. This includes the washer's transmission, steel-reinforced baseframe and leveling legs, plus the dryer's belt, drum rollers, steel-reinforced baseframe and 1/3-HP motor.</p>	<p>Would you like to have a more efficient washer without giving up your preference for top load style?</p> <p>The new Centennial® washer (model MVWC6ESW) is ENERGY STAR® qualified, using 65% less water and 49% less energy* in a configuration you've come to know. Plus, it features 3x3 Surround Spray, which uses three spray jets to wash, rinse and repeat for a better cleaning wash system that also saves water.</p>	<p>Does your dryer tend to overdry your clothes with high heat?</p> <p>Thanks to the GentleBreeze™ drying system, you'll no longer have to worry. It quickly and efficiently dries clothes for more consistent results. Plus, the IntelliDry® sensor measures moisture to stop the cycle when complete. This prevents overdrying, and could save you up to \$140 over the life of the dryer.**</p>
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57. In fact, in the 2009 Product Catalogue Whirlpool touts ENERGY STAR® qualification as one of the “Key Product Features” of the Mislabeled Washing Machines, once again prominently displaying an oversized image of the distinctive ENERGY STAR® logo

superimposed on alongside a photo of the Mislabeled Washing Machine. A copy of the Key Product Features page is reproduced below:

Key Product Features



Maytag® Commercial Technology (MCT)

Various components—from leveling legs to the baseframe—have been tested in commercial settings. Specifically, the washer's transmission features a drive shaft, spin gear and synthetic oil that have been tested to twice the life.



New 3x3 Surround Spray

Featured in model MVWC6ESW, this unique spray system uses three jets and load-sensing technology to wash, rinse and repeat for a better cleaning wash system that saves water and energy.



New ENERGY STAR® Qualified

Model MVWC6ESW has received ENERGY STAR® qualification, which means you'll save money on monthly utility bills without sacrificing excellent cleaning performance.

58. Whirlpool also displays an oversized image of the distinctive ENERGY STAR® logo superimposed on the Mislabeled Washing Machines alongside a photos of other, non-ENERGY STAR® clothes washers, to distinguish the Mislabeled Washing Machines:

					
MVWC700V 3.5 cu. ft. <i>Oxide (J)</i>	ME/GDC700V 7.4 cu. ft. <i>Oxide (J)</i>	MVWC700V 3.5 cu. ft. <i>White (W)</i>	ME/GDC700V 7.4 cu. ft. <i>White (W)</i>	New MVWC6ESW 4.0 cu. ft. I.E.C. <i>White (W)</i>	ME/GDC700V 7.4 cu. ft. <i>White (W)</i>

59. Additionally, the product “Spec Sheet” for the Mislabeled Washing Machine maintained on Whirlpool’s website, notes that “ENERGY STAR® Qualification” of the Mislabeled Washing Machine will result in savings on “utility bills”:



<http://insideadvantage.com/assets/pdfs/cms/MMLL172.pdf>

60. If there were any ambiguities on the part of consumers over the meaning of ENERGY STAR®, Whirlpool also included a glossary of terms in the 2009 Product Catalogue, titled “Feature Definitions” in which Whirlpool explains that ENERGY STAR®-qualified appliances “help lower utility bills.” A copy of the definition is reproduced below:

ENERGY STAR® Qualified
 Select Maytag® washers are ENERGY STAR® qualified to help lower utility bills while delivering excellent cleaning performance.

61. As with the 2009 Product Catalogue, the 2010 Maytag Laundry or product catalogue (2010 Product Catalogue), is replete with references to and images of the distinctive

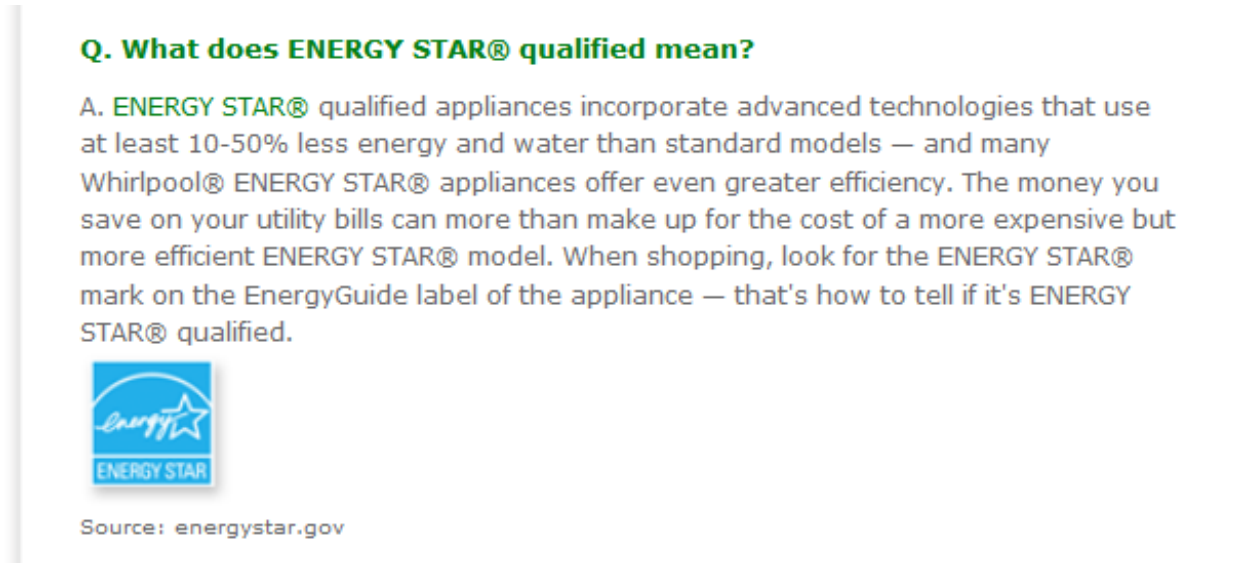
ENERGY STAR® logo. Similarly, in the 2010 Product Catalogue, Whirlpool touts ENERGY STAR®-qualification of the Mislabeled Washing Machines, prominently displaying an oversized image of the distinctive ENERGY STAR® logo superimposed on alongside a photo of the Mislabeled Washing Machines. According to the 2010 Product Catalogue, the ENERGY STAR® qualification of the Mislabeled Washing Machines, including model numbers MVWC6ESW and MVWC7ESW, “means you’ll save money on monthly utility bills ...”:



62. Again to erase any ambiguities on the part of consumers over the meaning of ENERGY STAR®, Whirlpool also included a glossary of terms in the 2010 Product Catalogue, titled “Feature Definitions” in which Whirlpool explains that ENERGY STAR®-qualification “mean the appliance exceeds the federal minimum efficiency standards as set forth by the Environmental Protection Agency and the U.S. Department of Energy, helping to save money on utility bills.”

63. Furthermore, Whirlpool’s website, www.whirlpool.com, explains the meaning of “ENERGY STAR® Qualified” and directs consumers to “look for the ENERGY STAR mark”

when shopping for appliances. A screenshot of the image on Whirlpool's website is reproduced below:



http://schedule.whirlpool.com/content.jsp?sectionId=1338#faq&wtpc=&wtcgn=CashForAppliances&wtcgs=CFA_Home&wti=FaqCFA (last visited Apr. 17, 2013).

64. Whirlpool also maintains a list of its ENERGY STAR®-qualified clothes washers on its website, further emphasizing the misrepresented energy and water savings of the Mislabeled Washing Machines, which are listed as models MVWC6ESW*+ and MVWC7ESW#** (as noted on the EnergyStar.gov website,⁶ “Model numbers often contain wildcard characters, such as *, #, and X, that are placeholders for non-energy attributes, such as color.”). In fact, Whirlpool’s list mirrors the list of purportedly ENERGY STAR®-compliant appliances found on the EnergyStar.gov website.

⁶ http://www.energystar.gov/index.cfm?fuseaction=clotheswash.display_column_definitions

Last Modified: 06/16/2010
Definitions of Terms Used in Column Headers

Brand	Model	Product Name	Volume (cubic feet)	kWh/ year	Modified Energy Factor (MEF)	Federal Standard (MEF)	Percent Better	Water Factor	Annual Water Use (gallons/ year)	Active	Active Date
AMANA											
Amana	NFW7200TW		3.11	216	1.93	1.26	53%	4.5	5.486	Yes	9/22/08
Amana	NFW7300W*+		3.46	162	2.39	1.26	90%	3.9	5.263	Yes	3/16/10
Amana	NFW7500V*+		3.51	187	2.22	1.26	76%	4.2	5.751	Yes	1/27/09
Amana	NFW7600X*+		3.86	177	2.35	1.26	87%	4.1	6.143	Yes	4/30/10
MAYTAG											
Maytag	MHW6280X*+		3.46	161	2.35	1.26	87%	3.8	5.154	Yes	4/30/10
Maytag	MHW6300V*+		3.47	160	2.18	1.26	73%	4.3	5.822	Yes	8/12/08
Maytag	MHW6400W**		3.51	161	2.31	1.26	83%	4.1	5.696	Yes	7/20/09
Maytag	MHW6400W**		3.86	165	2.59	1.26	106%	3.8	5.765	Yes	7/20/09
Maytag	MHW6450W**		3.86	165	2.59	1.26	106%	3.8	5.765	Yes	7/20/09
Maytag	MHW6500V*+		3.47	138	2.35	1.26	87%	3.8	5.210	Yes	8/12/08
Maytag	MHW6550W**		3.86	147	2.56	1.26	111%	3.6	5.452	Yes	7/20/09
Maytag	MHW6900V*+		3.79	141	2.58	1.26	105%	3.6	5.274	Yes	1/27/09
Maytag	MHW6950W**		3.86	141	2.58	1.26	105%	3.5	5.251	Yes	7/20/09
Maytag	MHW6950W*+		3.86	136	2.63	1.26	109%	3.4	5.190	Yes	12/9/09
Maytag	MHWZ400T*+		3.46	139	2.45	1.26	94%	3.9	5.222	Yes	8/21/07
Maytag	MHWZ600T*+		3.46	139	2.45	1.26	94%	3.9	5.222	Yes	8/21/07
Maytag	MHWZ600W*+		3.46	139	2.45	1.26	94%	3.9	5.222	Yes	12/9/09
Maytag	MVWB300W**		4.08	264	2.22	1.26	76%	4.3	6.881	Yes	7/20/09
Maytag	MVWB450W**		4.31	282	2.21	1.26	75%	4.2	7.062	Yes	7/11/09
Maytag	MVWB700V*+		4.08	252	2.23	1.26	77%	4.4	7.101	Yes	7/16/08
Maytag	MVWB750W**		4.31	282	2.21	1.26	75%	4.2	7.062	Yes	7/11/09
Maytag	MVWB800V*+		4.08	249	2.25	1.26	79%	4.5	7.117	Yes	7/16/08
Maytag	MVWB850W**		4.34	277	2.25	1.26	79%	4.3	7.384	Yes	7/11/09
Maytag	MVWC6ESX**		3.47	207	1.89	1.26	50%	7.1	9.871	Yes	6/16/10
Maytag	MVWC6ESW*+		3.43	211	1.85	1.26	47%	7.1	9.506	Yes	3/5/09
Maytag	MVWC7ESW**		3.43	212	1.85	1.26	47%	7.1	9.506	Yes	7/20/09
Maytag	MD 1720		1.9	141	1.89	1.26	50%	7.1	5.288	Yes	2/21/08
Maytag	MD 3720		1.9	141	1.89	1.26	50%	7.1	5.288	Yes	2/21/08

http://insideadvantage.com/assets/pdfs/cms/WP_EStarWashers.pdf

65. Besides promoting the Mislabeled Washing Machines on its own website, Whirlpool provided retailers with promotional materials that reinforced its misleading marketing campaign. For example, a listing for the model MVWC6ESWW on the website of online retail giant Amazon.com highlighted the model's purported ENERGY STAR® qualification at the very top of the product feature list:⁷

This 4.0 cu. ft. I.E.C. energy star qualified washer pays for itself in just over six years compared to pre-2004 conventional washers, based on lifetime water and energy savings.

66. Moreover, Lowe's marketed, for example, the Maytag Centennial model number MVWC7ESWW on its website alongside an oversized ENERGY STAR® logo displayed next to a photograph of the Mislabeled Washing Machine:

⁷ Previously available at http://www.amazon.com/Maytag-Centennial-MVWC6ESWW-Top-Load-Washer/dp/B002ACHJF0/ref=cm_cr_pr_product_top/185-2908430-1600761 (accessed Jan. 4, 2012).

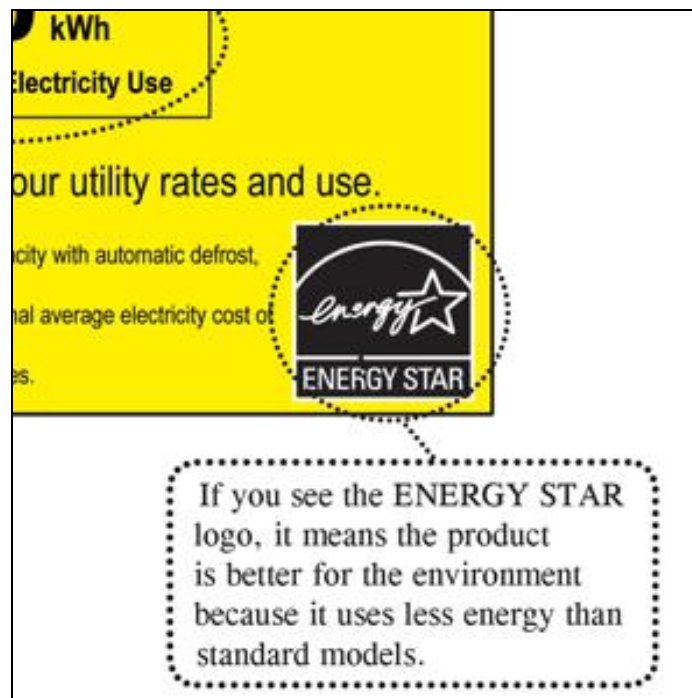


http://www.lowes.com/pd_142514-46-MVWC7ESWW_4294857976_?productId=3123237.

67. In addition to a comprehensive internet campaign, Whirlpool voluntarily posted the ENERGY STAR® logo on the EnergyGuide label, which was packaged with each of the Mislabeled Washing Machines. These EnergyGuide labels have been routinely displayed on Internet retailers' product websites for the Mislabeled Washing Machines and in or on the display models placed in retail showrooms.⁸

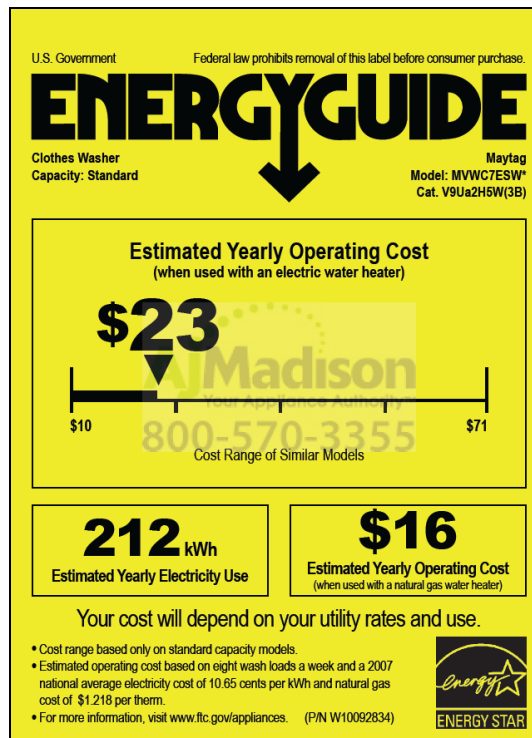
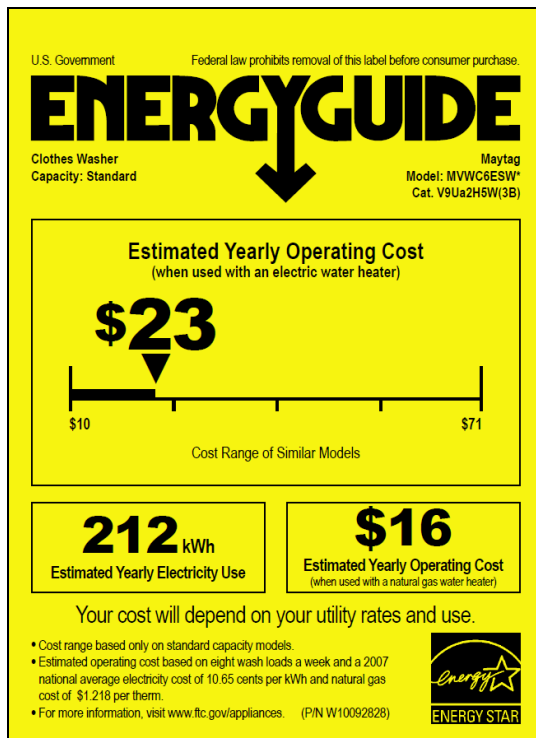
⁸ See, e.g., http://www.ajmadison.com/ajmadison/itemdocs/MVWC7ESWW_energy_guide.pdf (last visited July 11, 2014), see also http://www.ajmadison.com/ajmadison/itemdocs/MVWC6ESWW_Energy_Guide.pdf (last visited July 11, 2014).

68. The FTC maintains a website titled “Energy Guidance: Appliance Shopping With the Energy Guide Label.”⁹ The site informs consumers about the significance of the ENERGY STAR® logo when it appears on a product’s EnergyGuide label. The website states: “If you’ve shopped for appliances, you’ve seen the bright yellow Energy Guide label. ... The more energy efficient an appliance is, the less it costs to run,” and “If you see the ENERGY STAR® logo, it means the product is better for the environment because it uses less energy than standard models.”



69. Each of the Mislabeled Washing Machines included one of the following EnergyGuide labels bearing the basic model number of the Mislabeled Washing Machine and the ENERGY STAR® logo:

⁹ Available at <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea14.shtm> (last visited Sept. 21, 2012).



70. Besides including the ENERGY STAR® logo on the EnergyGuide label, which is packaged with each of the Mislabeled Washing Machines, Whirlpool also affixed the distinctive logo to the front of the washing machine.

71. In addition to these various promotional venues, Whirlpool issued press releases reaffirming its commitment and promise of water and energy savings. For example, on September 5, 2008, Whirlpool issued a press release titled “Whirlpool Corporation Leads Industry in Energy Efficiency; Company’s ENERGY STAR® Qualified Appliances Deliver Promised Savings.” The article, released in response to reports of competitors exceeding reported energy ratings, was released to “reassure consumers that all of its French Door Bottom-Mount refrigerators – sold under the Whirlpool, Maytag, KitchenAid and Amana brands – have legitimately earned the ENERGY STAR credential by rigorously following the required energy testing procedures.” Furthermore, Phil Pejovich, vice president refrigeration, Whirlpool North

America, stated: “We want consumers to know that when they purchase French Door Bottom-Mount refrigerators – and all ENERGY STAR qualified appliances by Whirlpool – they can do so with the confidence that they will deliver energy savings as communicated in-store, on the product and in the product literature.”

72. On October 23, 2009, Whirlpool once again took the opportunity to reaffirm its compliance with the ENERGY STAR® program and promise of energy savings. Specifically, on October 23, 2009, in an article titled “Whirlpool Corporation Applauds U.S. Department of Energy’s Steps to Enforce Energy Efficiency Standards,” the company stated: “‘We’re pleased that DOE is stepping up [ENERGY STAR®] enforcement as these actions are important for several reasons,’ said Katrina Helmkamp, senior vice president, product business teams, Whirlpool Corporation. ‘They will help ensure manufacturers of appliances are held accountable to deliver *the energy savings they promise*. In turn, consumers will be able to confidently use the Energy Guide label to make energy performance comparisons among brands while shopping, and to attain in real world use *the energy efficiency promised when they purchased the appliance*.’” (emphasis added).

C. Plaintiff’s Experiences

73. On September 25, 2010, Plaintiff Walt Famular purchased a Maytag Centennial MVWC6ESWW1 washing machine from appliance retailer Silver City in Spring Valley, New York. He paid \$500.00 plus tax, which included a substantial price premium due to its supposed water and energy efficiency and ENERGY STAR® qualification. The unit he purchased was marked with the ENERGY STAR® logo in two places, on the lower right-hand corner of the EnergyGuide label affixed to the washing machine, and also directly affixed to the front of the washing machine. He saw the ENERGY STAR® labels prior to and at the time of purchase, and understood them as a representation and warranty by both the manufacturer (which created and

affixed the labels) and the retailer (which displayed the labels) that the machine met the standards of water and energy efficiency established by the ENERGY STAR® program, and that the machine would help him maximize his water and energy savings while helping to protect the environment. He relied on these representations and warranties in deciding to purchase the washing machine, and these representations and warranties were part of the basis of the bargain, in that he would not have purchased the Maytag Centennial MVWC6ESWW1 if he had known that it was not, in fact, ENERGY STAR® compliant. He also understood that in making the sale, the retailer was acting with the knowledge and approval of Whirlpool and/or as the agent of Whirlpool. He also understood that the purchase involved a direct transaction between himself and Whirlpool, because the machine came with packaging and other materials prepared by Whirlpool, including warranty materials referencing a manufacturer's warranty provided directly to the consumer, indicating that he was purchasing warranty protection directly from Whirlpool as part of the transaction with the retailer.

D. DOE Testing And Revocation Of The Mislabeled Washing Machines' ENERGY STAR® Qualification

74. The success of the ENERGY STAR® program depends on the accuracy and reliability of the ENERGY STAR® logo as an indicator of highly efficient products. To protect the integrity of the ENERGY STAR® label and certification mark, the DOE has evaluated and verified performance test results to ensure that ENERGY STAR®-certified appliances correspond to actual savings for consumers.

75. On September 8, 2010, Springboard Engineering (a division of Underwriters Laboratories Verification Services) laboratories in Newton, Iowa completed DOE efficiency testing of a Maytag Centennial MVWC6ESWW1. The results showed the unit did not meet ENERGY STAR® standards.

76. On September 20, 2010, the DOE notified Whirlpool that DOE-initiated testing revealed that Whirlpool's model MVWC6ESWW1 did not meet the applicable ENERGY STAR® energy efficiency requirements.

77. After consulting with Whirlpool, the DOE proceeded with testing of additional units.

78. From January 3 through January 12, 2011, Springboard Engineering laboratories conducted DOE efficiency testing of four additional units of the Maytag Centennial MVWC6ESWW1. The results showed again that these units did not meet ENERGY STAR® standards.

79. On January 19, 2011, the DOE notified Whirlpool that the second round of testing confirmed that model MVWC6ESWW1 does not meet ENERGY STAR® requirements.

80. On March 16, 2011, the DOE referred the matter to the EPA, the brand manager for ENERGY STAR®, for appropriate action.

81. On May 7, 2012, the DOE and/or EPA Disqualified model MVWC6ESWW1.

82. In accordance with guidelines and the EPA's disqualification procedures, these models were then posted on the EPA's list of disqualified models.

83. Moreover, as a result of the disqualification by the EPA (after consulting with the DOE), Whirlpool was required to immediately cease labeling and shipping the appliance with the ENERGY STAR® logo, remove ENERGY STAR® references from related marketing materials, spec sheets and websites, and cover or remove labels on units within the manufacturer's control.

84. The Maytag models disqualified by the EPA and/or DOE include the model purchased by Plaintiff. The disqualification was not limited to base model number

MVWC6ESWW1. Rather, it applied to all Maytag models MVWC6ESW*+ and MVWC7ESW#**, including Plaintiff's Mislabeled Washing Machine.

85. Defendant Whirlpool did not modify the design or manufacture of the Mislabeled Washing Machines in any way that would affect the water or energy efficiency of the appliances. Indeed, the available parts lists for all Whirlpool's Maytag models MVWC6ESW*+ and MVWC7ESW#** show they are substantially similar, with the majority of parts, including the parts which affect energy usage, being the same. Charts of the parts list comparing the part numbers of the Mislabeled Washing Machines is attached hereto as Exhibit B.

86. Illustrative of this fact, the EnergyGuide Labels affixed to the Mislabeled Washing Machines were identical or substantially identical for all models, including the MVWC6ESWW0, MVWC6ESWW1, and MVWC7ESWW0. In fact, the MVWC6ESWW0 and the MVWC6ESWW1 share the same EnergyGuide label, which states that it applies to the MVWC6ESW* family of models. *See* ¶ 86. Furthermore, Defendant in its promotional brochures and print ads refer to the specific models MVWC6ESWW0, MVWC6ESWW1, and MVWC7ESWW0 simply as the "MVWC6ESW," "MVWC6ESWW," and "MVWC7ESW," and leave off the last two characters, as they identify non-energy attributes, such as color. *See* ¶¶ 70, 71, 78, 81, 82.

87. Furthermore, when a basic model is disqualified by the EPA and/or DOE, the disqualification order includes "all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency..." 10 C.F.R. § 430.2. All units of Maytag models MVWC6ESW*+ and MVWC7ESW#** were

manufactured by one manufacturer and have the same primary energy source, and have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency. Thus, the washing machine purchased by Plaintiff was equally affected by the EPA/DOE noncompliance and disqualification determinations.

88. Whirlpool is one of the world's leading manufacturers of home appliances, maintaining 65 manufacturing and technology research centers around the world. Besides playing a leadership role in crafting every major appliance efficiency regulation, "including a leading role in setting the ENERGY STAR program standards," the company purports to maintain rigorous testing procedures. Whirlpool's laboratories are certified annually by the Canadian Standards Association, and "work closely with them in rigorously demonstrating that the appropriate principles outlined by ISO/IEC 17025 are within [Whirlpool's] process for ENERGY STAR® product qualification." Moreover, Whirlpool touts that "the technical sophistication of our laboratories and the highly advanced skill sets of our engineers are among the best in the world. Our lab personnel also have expansive job scopes, which include more responsibility than just testing product for energy performance." *Id.* According to Whirlpool, the "Whirlpool process includes rigorous equipment maintenance and calibration, detailed lab procedures and comprehensive record keeping on both equipment and test results." May 27, 2010 Letter from Nick Gillespie (Government Relations Senior Specialist) to EPA concerning ENERGY STAR® Draft Lab Requirements. As such, Whirlpool either (a) tested the Mislabeled Washing Machines before marketing them and, at all times relevant hereto, knew that the models were non-compliant with the requirements of the ENERGY STAR® program or, in the alternative (b) affixed ENERGY STAR® labels to the Mislabeled Washing Machines without

testing them, and thus knew the representation concerning their energy efficiency was baseless. This information is solely within Whirlpool's possession.

89. The Mislabeled Washing Machines have never, at any point, been properly labeled with the ENERGY STAR® logo. This is analogous to the unauthorized practice of medicine. Suppose a fraudster misrepresents himself as a board-certified physician and opens a medical clinic, only to be exposed years later. This does not mean that the fraudster was properly licensed to practice medicine prior to his exposure. To the contrary, the fraudster was never licensed, and any statements to the contrary were false. Here, Whirlpool made misrepresentations about the ENERGY STAR® status of the Mislabeled Washing Machines. Just because the DOE disqualified the units in 2012 does not mean they were compliant in 2009. To the contrary, the DOE's determination means the Mislabeled Washing Machines were *never* properly labeled. Any representation to the contrary was false when it was made. The Mislabeled Washing Machines failed to work properly from the outset.

90. The failure of the Mislabeled Washing Machines to comply with ENERGY STAR® standards is a latent defect. If this defect were known, the Mislabeled Washing Machines would not have been saleable as described, and they would not measure up to the description given to the purchaser. Furthermore, this defect is hidden from purchasers. Reasonable consumers do not have the knowledge or equipment to assess whether their appliances are ENERGY STAR® compliant. This information is solely within Whirlpool's possession.

91. Plaintiff and Class members who purchased Mislabeled Washing Machines paid a price premium due to their Mislabeled Washing Machine's supposed superior water usage, energy efficiency, and ENERGY STAR® qualification, and paid more money in additional

water and energy costs to operate his or her Mislabeled Washing Machine than they would have had the appliance actually met the ENERGY STAR® qualification as represented and promised by Whirlpool. The additional Utility Bills can be reasonably quantified by an appropriate study, and through objective mathematical processes, based on the data from the DOE-initiated testing described herein.

92. Plaintiff and the Class members could not have discovered that their washing machines were not ENERGY STAR® compliant until the EPA and/or DOE's disqualification order was issued on May 7, 2012. No reasonable consumer has the knowledge or equipment to test appliances for ENERGY STAR® compliance.

93. Plaintiff, and each purchaser of the Mislabeled Washing Machines, paid a price premium due to their Mislabeled Washing Machine's supposed water and energy efficiency and ENERGY STAR® qualification. The amount of the price premium can be reasonably quantified by an appropriate market study of the prices for comparable washing machines sold with and without the ENERGY STAR® logo, or through a contingent valuation study, or through other means regularly employed by economic and valuation experts.

94. Plaintiff, and each purchaser of the Mislabeled Washing Machines, paid more money in additional Utility Bills to operate the Mislabeled Washing Machines than each would have paid if the washing machines had actually met the ENERGY STAR® standards as promised. The additional Utility Bills can be reasonably quantified by an appropriate study, and through objective mathematical processes, based on the data from the DOE-initiated testing described herein.

TOLLING OF THE STATUTE OF LIMITATIONS

95. Plaintiff is a member of the putative nationwide class in *Dzielak et al. v. Whirlpool Corp. et al.*, Case No. 2:12-cv-00089-KM-JBC, filed January 5, 2012 in the United States District Court for the District of New Jersey.

96. Due to the filing of the *Dzielak* case, the statute of limitations for the claims asserted herein has been tolled since at least January 5, 2012. *See American Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 553-54 (1974) (“[T]he commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action.”).

97. On February 5, 2016 (1 business day ago), the *Dzielak* plaintiffs filed their motion for class certification, which stated: “In order to avoid choice of law issues, plaintiffs no longer seek to certify a nationwide class, and have instead moved to certify seven statewide classes on behalf of purchasers in New Jersey, California, Florida, Ohio, Indiana, Virginia and Texas.”

98. As a result, Mr. Famular’s claims, and the claims of purchasers of the Mislabeled Washing Machines residing in the other 43 states, are no longer being asserted in *Dzielak*.

CLASS ACTION ALLEGATIONS

99. Plaintiff seeks to represent a class defined as all persons in the United States who purchased a Mislabeled Washing Machine, excluding purchasers in New Jersey, California, Florida, Ohio, Indiana, Virginia and Texas (the “43 State Class”).

100. Plaintiff also seeks to represent a class defined as all persons in New York who purchased a Mislabeled Washing Machine (hereafter, the “New York Class”).

101. Members of the Classes are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class and Subclasses number in the

tens of thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but will be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant and third party retailers and vendors.

102. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to:

(a) whether the Mislabeled Washing Machines were sold bearing false labels misrepresenting them as ENERGY STAR® compliant;

(b) whether Class members suffered an ascertainable loss as a result of the Defendant's misrepresentations; and

(c) whether, as a result of Defendant's misconduct as alleged herein, Plaintiff and Class members are entitled to restitution, injunctive, and/or monetary relief and, if so, the amount and nature of such relief.

103. Plaintiff's claims are typical of the claims of Classes members because Plaintiff and all Class members purchased a Mislabeled Washing Machine bearing a false label misrepresenting it as ENERGY STAR® compliant, when in fact it was not.

104. Plaintiff is an adequate representative of the Classes because his interests do not conflict with the interests of the Class members he seeks to represent, he has retained counsel competent and experienced in prosecuting class actions, and they intend to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and his counsel.

105. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I
(Breach of Express Warranty)

106. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

107. Plaintiff brings this Count I individually and on behalf of the members of the 43-State Class and the New York Class.

108. Defendant, as the designer, manufacturer, marketer, distributor, or seller expressly warranted that the Mislabeled Washing Machines were fit for their intended purpose in that they would function properly as water and energy-efficient washing machines within the parameters established by federal law and the ENERGY STAR® program.

109. In fact, the Mislabeled Washing Machines were not fit for such purposes because they do not function properly as water and energy-efficient washing machines within the parameters established by federal law and the ENERGY STAR® program.

110. Plaintiff and Class members were injured as a direct and proximate result of Defendant's breach because: (a) they would not have purchased the Mislabeled Washing Machines on the same terms if the true facts concerning their energy efficiency and water usage had been known; (b) they paid a price premium due to the mislabeling of the washing machines as ENERGY STAR®-qualified; (c) the Mislabeled Washing Machines did not perform as promised; and (d) Plaintiff and Class members have paid and will continue to pay higher Utility Bills as long as they continue to use the Mislabeled Washing Machines.

COUNT II
(Unjust Enrichment)

111. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

112. Plaintiff brings this Count II individually and on behalf of the members of the 43-State Class and the New York Class.

113. Plaintiff and Class members conferred a benefit on Whirlpool by purchasing the Mislabeled Washing Machines.

114. Whirlpool misrepresented that the Mislabeled Washing Machines complied with ENERGY STAR® standards, and misrepresented the water usage and energy efficiency of the Mislabeled Washing Machines, for the purpose of generating retail sales which could and did increase the amount of wholesale sales to Whirlpool.

115. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff and Class members' purchases of the Mislabeled Washing Machines. Retention under these circumstances is unjust and inequitable because Whirlpool misrepresented that the Mislabeled Washing Machines complied with ENERGY STAR® standards, when in fact they did not, and misrepresented the water and energy efficiency of the Mislabeled Washing

Machines, which caused injuries to Plaintiff and Class members because (a) they would not have purchased the Mislabeled Washing Machines on the same terms if the true facts concerning their energy efficiency and water usage had been known; (b) they paid a price premium due to the mislabeling of the washing machines as ENERGY STAR®-qualified; (c) the Mislabeled Washing Machines did not perform as promised; and (d) Plaintiff and Class members have paid and will continue to pay higher Utility Bills for as long as they continue to use the Mislabeled Washing Machines.

116. Because Defendant's retention of the non-gratuitous benefit conferred on them by Plaintiff and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiff and the Class members for their unjust enrichment, as ordered by the Court.

COUNT III
(Deceptive Acts Or Practices, New York Gen. Bus. Law § 349)

117. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

118. Plaintiff brings this Count III individually and on behalf of the members of the New York Class.

119. By the acts and conduct alleged herein, Whirlpool committed unfair or deceptive acts and practices by misrepresenting that the Mislabeled Washing Machines complied with ENERGY STAR® standards, and misrepresenting the water usage and energy efficiency of the Mislabeled Washing Machines, for the purpose of generating retail sales which could and did increase the amount of wholesale sales to Whirlpool.

120. The foregoing deceptive acts and practices were directed at consumers.

121. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics and benefits of the Mislabeled Washing Machines to induce consumers to purchase same.

122. Plaintiff and members of the Class were injured because: (a) they would not have purchased the Mislabeled Washing Machines on the same terms if the true facts concerning their energy efficiency and water usage had been known; (b) they paid a price premium due to the mislabeling of the washing machines as ENERGY STAR®-qualified; (c) the Mislabeled Washing Machines did not perform as promised; and (d) Plaintiff and Class members have paid and will continue to pay higher Utility Bills for as long as they continue to use the Mislabeled Washing Machines.

123. As a result of Defendant's false, misleading and deceptive statements and representations of fact, Plaintiff and members of the Class have suffered and continue to suffer economic injury.

124. Plaintiff and members of the Class suffered an ascertainable loss caused by Defendant's Misrepresentations equal to the price premium they paid for the Mislabeled Washing Machines, as well as the lost savings on their utility bills.

125. On behalf of himself and other members of the Class, Plaintiff seeks to enjoin the unlawful acts and practices described herein, to recover actual damages or fifty dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

COUNT IV
(False Advertising, New York Gen. Bus. Law § 350)

126. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

127. Plaintiff brings this Count IV individually and on behalf of the members of the New York Class.

128. By the acts and conduct alleged herein, Whirlpool committed unfair or deceptive acts and practices by misrepresenting that the Mislabeled Washing Machines complied with ENERGY STAR® standards, and misrepresenting the water usage and energy efficiency of the Mislabeled Washing Machines, for the purpose of generating retail sales which could and did increase the amount of wholesale sales to Whirlpool.

129. Based on the foregoing, Defendant has engaged in consumer-oriented conduct that is deceptive or misleading in a material way which constitutes false advertising in violation of Section 350 of the New York General Business Law.

130. Defendant's false, misleading and deceptive statements and representations of fact were and are directed to consumers.

131. Defendant's false, misleading and deceptive statements and representations of fact were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

132. Defendant's false, misleading and deceptive statements and representations of fact have resulted in consumer injury or harm to the public interest.

133. Plaintiff and members of the Class were injured because: (a) they would not have purchased the Mislabeled Washing Machines on the same terms if the true facts concerning their energy efficiency and water usage had been known; (b) they paid a price premium due to the mislabeling of the washing machines as ENERGY STAR®-qualified; (c) the Mislabeled Washing Machines did not perform as promised; and (d) Plaintiff and Class members have paid and will continue to pay higher Utility Bills for as long as they continue to use the Mislabeled Washing Machines.

134. As a result of Defendant's false, misleading and deceptive statements and representations of fact Plaintiff and members of the Class have suffered and continue to suffer economic injury.

135. Plaintiff and members of the Class suffered an ascertainable loss caused by Defendant's Misrepresentations equal to the price premium they paid for the Mislabeled Washing Machines, as well as the lost savings on their utility bills.

136. On behalf of himself and other members of the Class, Plaintiff seeks to enjoin the unlawful acts and practices described herein, to recover their actual damages or five hundred dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- a. For an order certifying the 43-State Class and the New York Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Plaintiff's attorneys as Class Counsel to represent the Class members;
- b. For an order declaring the Defendant's conduct violates the statutes referenced herein;
- c. For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- d. For statutory, compensatory, and punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;
- g. For injunctive relief as pleaded or as the Court may deem proper;
- h. For an order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit;

- i. Damages, restitution, and/or disgorgement in an amount to be determined at trial; and
- j. For such other and further relief as the Court may deem proper.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action and issues so triable.

Dated: February 8, 2016

Respectfully submitted,

BURSOR & FISHER, P.A.

By: 

Scott A. Bursor

Scott A. Bursor
Joseph I. Marchese
Neal J. Deckant
Frederick J. Klorczyk III
888 Seventh Avenue
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
E-Mail: scott@bursor.com
jmarchese@bursor.com
ndeckant@bursor.com
fklorczyk@bursor.com

Attorneys for Plaintiff

EXHIBIT A



LAUNDRY
Spring 2010

1/2-HP Drain Pump

This pump is constructed of durable polypropylene and features lubricated, sealed bearings. A heavy-duty rubber impeller protects the powerful drain pump against loose change and other debris.

100° Arc of Agitation

The agitator produces a sweeping arc motion that gently rolls clothes through the wash water.

3x3 Surround Spray

Three spray jets and load-sensing technology wash, rinse and repeat for a better cleaning wash system that saves water and energy.

360° Front and Rear Heat Seal

This triple-layered seal keeps heat inside the dryer drum for dependable performance.

**4-Tray Dispenser Drawer**

The self-cleaning dispenser drawer is easy to open and replenish with detergent, bleach and fabric softener. Plus there's an additional place for oxygenated stain-fighting liquid or powder pre-treater.

Advanced Vibration Control

Select Performance Series washers feature gap dampers and springs to minimize movement of the wash drum during spin cycle. Additional padding muffles washer noise and also cushions vibration. Plus, enhanced software adjusts load distribution reducing vibration and noise.

Allergen Removal Cycles

Select Performance Series and Bravos® washers feature cycles that eliminate at least 95% of common allergens from fabrics. Allergens tested were dust mites and pet dander.

Automatic Temperature Control

Promotes dependable cleaning performance by ensuring correct water temperatures.

CEE Tier Ratings

Although all models on the Consortium for Energy Efficiency (CEE) list are efficient, the more efficient products are listed in the highest tier (3). Select markets qualify for CEE Tier Rating rebates. Consult your local utility company for any available rebates.

Clean Boost Option

By selecting this option, the internal water heater on select Bravos® washers maintains water temperature throughout the entire wash cycle. The need for pretreating is reduced and cleaning performance is enhanced.

Clean Washer Cycle

This special cycle helps rid the wash basket of odor-causing buildup. Add Affresh® washer cleaner to enhance results.

Commercial Capacity, Direct Drive Infinite Speed Motor

Magnets propel the Bravos® washer motor assuring infinite wash, tumble and spin speeds of up to 1,100 RPM. Plus, the motor's 18-lb UL capacity rating is commercial grade.

Commercial-Grade, 1/3-HP Motor

Extra power makes it possible to tumble larger loads with less wear on the motor of Centennial® and Bravos® dryers.

Commercial-Grade, 5-Rib Dryer Belt

The industry's widest dryer belt stays strong to last long on Performance Series, Centennial® and Bravos® dryers.

Commercial-Grade, 8-Rib Washer Belt

Select Performance Series washers feature the industry's widest washer belt that stays strong to last long.

Commercial-Grade Glass Window

Strong scratch- and shatter-resistant glass on select lids and doors allows you to see your laundry as it washes and dries.

Control Lockout

A child safety door latch and locked controls keep little hands from running the washer.

DependableClean™ Wash System

Keeps clothes looking their best. The LoadFlex™ agitator produces a 100° arc wash motion that rolls clothes through the wash and rinse cycles to provide a reliable clean, wash after wash.

Direct Y-Connector Water Hook-Up

A solid brass Y-connector delivers water from the cold water inlet directly to the dryer. It eliminates the need to fill a reservoir in dryers that feature steam cycles. Included with all steam dryers.

DuraCushion™ Dryer Drum

Provides a smooth, scratch resistant surface for less friction and wear. Clothes gently glide off its surface without snagging or pilling.

Dynamic Venting Technology™

See *FreshHold™ Option*.

End-of-Cycle Signal

Signals the end of the cycle and is simple to turn on or off. The volume can be adjusted on select models.

ENERGY STAR® Qualified

An ENERGY STAR® qualification means the appliance exceeds the federal minimum efficiency standards as set forth by the Environmental Protection Agency and the U.S. Department of Energy, helping to save money on utility bills.

Flat Back Construction

Creates a shorter depth, making it easier to fit the dryer in locations where space is at a premium.

Fresh Hold™ Option

The industry's first built-in fan is part of Dynamic Venting Technology™ and helps keep clean laundry from smelling bad. The quiet, efficient fan and intermittent tumbling circulate fresh air and reduce moisture in clothes, so you can stop worrying about leaving them in the washer too long.

**Fresh Spin™ Option**

Clothes periodically tumble for up to 6 hours after cycle's end to remain fresh even if you don't move them to the dryer right away.

Full-Width Lid Bumper

Creates a seal between the lid and washer opening for quieter operation.

GentleBreeze™ Drying System

Quickly and efficiently dries clothing for more consistent results.

Heavy-Duty Blower

A 100-foot vent length for the Bravos® dryer's 1,950 RPM blower system offers the ultimate installation flexibility. Plus, increased blower speeds prevent lint from building up.

Heavy-Duty, Die-Cast Door Hinge

This durable door hinge provides structural strength for years of dependability.

Heavy-Gauge Steel, Wide-Opening Lid

Made of durable steel, it keeps the interior of the washer sealed off during use. Plus, the wide opening creates a larger target area for loading and unloading clothes.

Hose Reversal Technology

In the event of improper hose installation, front load washers self-correct so your clothes are never damaged due to incorrect water temperatures.

IntelliClean™ Impeller

A wash plate with fins continuously moves clothes through the water, effectively cleaning without the use of an agitator.

IntelliDry® Sensor

Measures moisture levels as clothes dry to minimize the risk of overdrying and shrinking. Clothes come out dry, yet cool to the touch.

IntelliFill™ Automatic Water Level Sensor

Built-in sensors match water usage to load size, saving both water and money.

EXHIBIT B

<u>TOP AND CABINET PARTS</u>				
Part Name		Model: MVWC6ESWW1	Model: MVWC7ESWW0	Model: MVWC6ESWW0
Literature Parts Installation Instructions: English/French	*	W10200890	W10200890	W10200331
Literature Parts Installation Instructions: Spanish	*	W10200891	W10200891	W10200662
Use & Care Guide: English/French		W10092798	W10092798	W10092798
Use & Care Guide: Spanish		W10092799	W10092799	W10092799
Feature Sheet: English/French		W10092811	W10092811	W10092811
Feature Sheet: Spanish		W10092812	W10092812	W10092812
Load Sense Info Sheet		W10196538	W10196538	W10196538
Energy Guide		W10092828	W10092834	W10092813
Wiring Diagram	*	W10248232	W10248232	W10202237
Lid	*	W10093782	W10164516	W10093782
Screw, Lid Hinge Mounting (4)		W10119828	W10119828	W10119828
Bearing, Lid Hinge (2)		8319539	8319539	8319539

<u>TOP AND CABINET PARTS</u>				
Part Name		Model: MVWC6ESWW1	Model: MVWC7ESWW0	Model: MVWC6ESWW0
Screw, Ground		3351614	3351614	3351614
Switch, Lid		8318084	8318084	8318084
Hinge, Lid (L.H.)	*	W10225136	8559336	W10225136
Hinge, Lid (R.H.)	*	91770	W10202542	91770
Clip, Top & Cabinet & Rear Panel (2)		62780	62780	62780
Dispenser, Bleach		W10192089	W10192089	W10192089
Top	*	W10194868	W10203530	W10194868
Spacer, Cabinet To Top (4)		62750	62750	62750
Cabinet		63424	63424	63424
Screw, 10-16 x 3/8 (4)	*	W10165554	3390631	W10165554
Bumper, Lid (2)	*	9724509		9724509
Cabinet-Damper, Sound		W10177046	W10177046	W10177046
Spring- Extension, Glass Lid			W10208782	
Clip, Retainer			3350828	

<u>TOP AND CABINET PARTS</u>				
Part Name		Model: MVWC6ESWW1	Model: MVWC7ESWW0	Model: MVWC6ESWW0
Filter, RFI				8540229
Screw, 8-18 x 3/8				90767
Harness, Jumper				W10177046

LEGEND:

Highlighted or shaded rows indicate parts with variation.

* indicates parts which only vary in one model.

<u>CONTROLS AND REAR PANEL PARTS</u>				
Part Name		Model: MVWC6ESWW1	Model: MVWC7ESWW0	Model: MVWC6ESWW0
Switch, Rotary		8578416	8578416	8578416
Switch, Rotary	*	3949180	3949180	3949187
Clip, Console (2)		8312709	8312709	8312709
ATC-Auto Load Sensing Switch	*	W10248240	W10248240	
Switch, Rotary	*	3949180	3949180	
Shield, Suds	*	W10245838	W10245838	W10188372
Timer (Motor not a Service Part)		W10243947	W10243947	W10243947
Circuit Board, Agitation Delay		W10104800	W10104800	W10104800
Panel, Control (Includes Item 10)	*	W10089738	W10089738	W10089729
Badge Assembly		W10101390	W10101390	W10101390
Clip, Knob		8536939	8536939	8536939
Knob, Control		W10180218	W10180218	W10180218
Knob, Timer		W10180213	W10180213	W10180213
Dial, Timer		W10180214	W10180214	W10180214
Strap, Console		8568314	8568314	8568314
Cord, Power		8578842	8578842	8578842

<u>CONTROLS AND REAR PANEL PARTS</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Strain Relief, Power Cord		3952821	3952821	3952821
Screw, 8-18 x 1/2		9740848	9740848	9740848
Screw, Ground		3351614	3351614	3351614
Cable Tie		3347868	3347868	3347868
U-Bend, Drain Hose		8577378	8577378	8577378
Drain Hose Assembly (Includes Item 28)		W10189267	W10189267	W10189267
Cap, End (L.H.) (Includes Item 3)		W10193824	W10193824	W10193824
Cap. End (R.H.) (Includes Item 3)		W10193821	W10193821	W10193821
Screw, 10-16 x 3/8		62863	62863	62863
Support, Rear Panel		8519200	8519200	8519200
Screw, 8-18 x 1/2		359625	359625	359625
Clamp, Hose		8541668	8541668	8541668
Clamp, Hose		8317496	8317496	8317496
Clamp, Hose		3363366	3363366	3363366

<u>CONTROLS AND REAR PANEL PARTS</u>				
Part Name		Model: MVWC6ESWW1	Model: MVWC7ESWW0	Model: MVWC6ESWW0
Hose, Pump To Tub (Includes Item 30)		3951449	3951449	3951449
Panel, Rear		W10194451	W10194451	W10194451
Pad, Rear Panel		62747	62747	62747
Harness, Wiring	*	W10204122	W10204122	W10243952
Clip, Harness & Pressure Hose		8055003	8055003	8055003
Valve, Water Inlet		W10175893	W10175893	W10175893
Hose, Flowmeter to Tub Ring		W10166732	W10166732	W10166732
Clamp, Hose		W10185367	W10185367	W10185367
Clamp, Hose		W10117298	W10117298	W10117298
Flowmeter		W10176591	W10176591	W10176591
Screw, Ground		3400073	3400073	3400073
Hose, Valve to Flowmeter		W10166731	W10166731	W10166731
Clip, Push-In Retainer			W10000080	
Switch, Water Temperature (ATC)				W10179666

<u>CONTROLS AND REAR PANEL PARTS</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Switch, Auto Load Sensing				W10177795
Retainer, Harness				8317975

LEGEND:

Highlighted or shaded rows indicate parts with variation.

* indicates parts which only vary in one model.

<u>AGITATOR, BASKET AND TUB PARTS</u>				
Part Name		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Dispenser, Fabric Softener		8575076	8575076	8575076
Cap, Barrier		3354733	3354733	3354733
Seal, Inner Cap		W10072840	W10072840	W10072840
Screw & Washer (5/16-24 x 1)		358237	358237	358237
Washer		3949550	3949550	3949550
Agitator (Complete)		W10093672	W10093672	W10093672
Cam, Driven		3363663	3363663	3363663
Dog, Agitator Clutch (4)		3366877	3366877	3366877
Bearing, Driven Cam		3363661	3363661	3363661
Clothes Mover		3349019	3349019	3349019
Spacer, Thrust		3350389	3350389	3350389
Agitator		W10110020	W10110020	W10110020
Tub Ring		W10167984	W10167984	W10167984
Gasket, Tub Ring		3359585	3359585	3359585
Clip, Agitator		3354845	3354845	3354845
Washer, Agitator		8543666	8543666	8543666
Balance Ring		W10006326	W10006326	W10006326
Nut, Spanner		W10116602	W10116602	W10116602
Basket & Balance Ring		W10006327	W10006327	W10006327
Clip, Pressure Switch Hose		2219077	2219077	2219077

<u>AGITATOR, BASKET AND TUB PARTS</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Hose, Pressure Switch	*	W10240485	W10240485	W10211144
Block, Basket Drive		389140	389140	389140
Tub		63849	63849	63849
Gasket, Centerpost		383727	383727	383727

LEGEND:

Highlighted or shaded rows indicate parts with variation.

* indicates parts which only vary in one model.

<u>BRAKE, CLUTCH, GEARCASE, MOTOR AND PUMP PARTS</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Brake & Drive Tube (Complete)		388952	388952	388952
Washer, Spin Tube Thrust		63292	63292	63292
Ring, Spin Tube Support		62697	62697	62697
Ring, Retainer		63283	63283	63283
Clutch (Complete)		8299642	8299642	8299642
Band & Lining, Clutch		3951993	3951993	3951993
Cap, Clutch Spring (2)		62646	62646	62646
Spring, Clutch		8559387	8559387	8559387
Gearcase (Complete)	*	W10251783	W10251783	W10140301
Screw, Gearcase to Base (3)		3357334	3357334	3357334
Plate, Motor Mount to Gearcase		62611	62611	62611
Grommet, Motor (4)		62691	62691	62691
Coupling, Motor & Isolation		3978849	3978849	3978849
Seal		8577374	8577374	8577374

<u>BRAKE, CLUTCH, GEARCASE, MOTOR AND PUMP PARTS</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Clip, Anti-Rattle		3355454	3355454	3355454
Screw		3400516	3400516	3400516
Retainer, Motor (2)		W10086010	W10086010	W10086010
Shield, Tub to Motor		3362089	3362089	3362089
Motor, Main Drive		661600	661600	661600
Switch, Main Drive Motor		62850	62850	62850
Retainer, Pump (2)		8546127	8546127	8546127
Pump (Complete)		3363394	3363394	3363394
Screw, 10-16 x 5/8		3387485	3387485	3387485
Shield, Motor		3946532	3946532	3946532
Washer, Thrust		8578981	8578981	8578981
Screw, 10-16 x 3/8		62863	62863	62863
Capacitor		8572717	8572717	8572717
Clamp, Capacitor		3949496	3949496	3949496

LEGEND:

Highlighted or shaded rows indicate parts with variation.

* indicates parts which only vary in one model.

<u>MACHINE BASE PARTS</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Screw, Bracket Mounting (10-32 x 5/8)		3400076	3400076	3400076
Bracket, Spring Outer (2)		64067	64067	64067
Spring Suspension (3)		63907	63907	63907
Support & Brake, Tub		8575214	8575214	8575214
Bracket, Spring Outer (L.F.)		64065	64065	64065
Link, Leveling Mechanism (2)		63466	63466	63466
Spring, Leveling Mechanism		62597	62597	62597
Pin, Knurled		62837	62837	62837
Foot, Rear (2)		62596	62596	62596
Bearing, Centerpost (2)		8546455	8546455	8546455
Seal, Centerpost (3)		357409	357409	357409
Spring, Counterweight	*	388492	W10250667	388492
Pad, Plate		62568	62568	62568
Plate, Suspension (includes item 13)		3946509	3946509	3946509
Pad, Base		3363660	3363660	3363660

<u>MACHINE BASE PARTS</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Base Assembly (includes items 6, 7, 8, 9, 13, 14, 15 & 22)		3946512	3946512	3946512
Nut, Lock (2) (3/8 x 16)		3359452	3359452	3359452
Foot, Front (2)		W10001130	W10001130	W10001130
Seal, Centerpost		8577376	8577376	8577376
Centerpost Bearing Kit (includes items 10, 11 & 19)		285203	285203	285203
Ring, Sound Deadening		63134	63134	63134
Retainer, Suspension Spring		W10145155	W10145155	W10145155

LEGEND:

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<u>WIRING HARNESS PARTS</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Retainer, Harness		3349557	3349557	3349557
Clip, Harness		388498	388498	388498
Clip, Harness		3347812	3347812	3347812
Clip, Harness (Push-In)		3352501	3352501	3352501
Clip, Harness (Half-Harness)		90016	90016	90016
Clip, Harness		3390496	3390496	3390496
Retainer, Harness		389379	389379	389379
Timer, Block Disconnect (Natural)		3948614	3948614	3948614
Timer, Block Disconnect (Black)		352089	352089	352089
Receptacle, Terminal (3-Way)		62889	62889	62889
Plug, Terminal (3-Way)		353424	353424	353424
Block, Disconnect (Motor 2 Speed)		62505	62505	62505
Block, Disconnect		3347243	3347243	3347243
Protector		63523	63523	63523
Connector (2-Way)		717252	717252	717252
Clip, Harness		3352944	3352944	3352944
Block, Disconnect (12-Way)		3390423	3390423	3390423

<u>WIRING HARNESS PARTS</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Receptacle (6-Way)		3347730	3347730	3347730
Connector (T.P.A.) (3-Circuit)		3948617	3948617	3948617
Plug (T.P.A.) (3- Circuit) (Pressure Switch)		3360056	3360056	3360056
Block, Connector (Natural)		3354925	3354925	3354925
Block, Connector (Red)		3354926	3354926	3354926

LEGEND:

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<u>BRAKE AND DRIVE TUBE PARTS</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Brake and Drive Tube (complete)		388952	388952	388952
Ring, Thrust		62658	62658	62658
Seal, Drive Tube		356427	356427	356427
Tube, Basket Drive		64027	64027	64027
Ring, Retaining		64035	64035	64035
Shoe, Brake (2)		64232	64232	64232
"T" Bearing, Spin Tube		62703	62703	62703
Cap, Brake Spring (2)		3353956	3353956	3353956
Spring, Brake		387806	387806	387806
Sleeve, Brake Spring		3355360	3355360	3355360
Cam, Brake Release		661516	661516	661516
Sleeve, Cam		63022	63022	63022
Driver, Brake Cam		64194	64194	64194
Ring, Retaining		90368	90368	90368

LEGEND:

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<u>GEARCASE PARTS</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Gearcase (complete)	*	W10251783	W10251783	W10140301
Cover, Gearcase		285202	285202	285202
Seal, Gearcase Cover		3349985	3349985	3349985
Sealer, Gasket (.20 Fl. Oz.) (6 ml)		285195	285195	285195
Screw, Gearcase Cover Mounting (8) (10-24 x 3/8)		3351614	3351614	3351614
Spin Pinion & Gear Spin Kit		W10172898	W10172898	W10172898
Seal, Spin Pinion (part of item 6, not serviced separately)				
Ring, Retaining (2)		90369	90369	90369
Retainer, Spring (2)		62677	62677	62677
Spring, Agitate		62676	62676	62676
Gear, Agitate (includes items 15 and 17)		W10110245	W10110245	W10110245
Washer, Agitate Gear		62619	62619	62619

<u>GEARCASE PARTS</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Cam Follower (includes item 14)		62580	62580	62580
Cam, Agitate (includes item 13)		3976349	3976349	3976349
Shaft, Agitator		389231	389231	389231
Washer, Cam Thrust		62618	62618	62618
Washer, Intermediate		388815	388815	388815
Shaft, Agitator (Complete)		389387	389387	389387
Bearing, Thrust (includes item 20)		16018	16018	16018
Ball Bearing (includes item 19)		85529	85529	85529
Seal, Thrust Plug		W10111745	W10111745	W10111745
Ring, Retaining		3362552	3362552	3362552
Washer Kit, Thrust		285766	285766	285766
Nuetral Assembly		388253	388253	388253
Rack, Connecting		8546456	8546456	8546456
Actuator, Shift		62621	62621	62621

<u>GEARCASE PARTS</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Gear, Main Drive (not serviced separately)				
Bottom & Pinion Gearcase (not serviced separately)				

LEGEND:

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<u>OPTIONAL PARTS (NOT INCLUDED)</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Paint, Touch-Up (1/2 Oz.)		72017	72017	72017
Paint, Pressurized Spray (12 Oz.) (Primer, Gray)		350938	350938	350938
Paint Pressurized Spray (12 Oz.) (White)		350930	350930	350930
Paint, Bulk (1 qt.) (White - Uncut)		799344	799344	799344
Oil, Gearcase (16 Oz.)		350572	350572	350572
Lubricant (Use only in brake shoe assembly on roller and pin)		285208	285208	285208
Sealer, Gasket (.20 Fl. Oz.) (6 ml)		285195	285195	285195
Drain Protector		367031	367031	367031
Siphon Break Kit		280129	280129	280129
Drain Hose Adapter Kit		280130	280130	280130
Drain Hose Extension Kit		280131	280131	280131

<u>OPTIONAL PARTS (NOT INCLUDED)</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Inlet Hoses, 4 Ft. (two black hoses with straight ends and 4 rubber washers)		8212546RP	8212546RP	8212546RP
Inlet Hoses, 5 ft. (two black hoses with straight ends and 4 rubber washers)		8212641RP	8212641RP	8212641RP
Inlet Hoses, 5 ft. (one red hose and one blue hose with straight ends and 4 rubber washers)		8212545RP	8212545RP	8212545RP
Inlet Hoses, 5 ft. (two braided hoses with straight ends and 4 rubber washers)		8212487RP	8212487RP	8212487RP
Inlet Hoses, 6 ft. (two black hoses with one straight end and one 90 degree end and 4 rubber washers)		8212637RP	8212637RP	8212637RP

<u>OPTIONAL PARTS (NOT INCLUDED)</u>				
<u>Part Name</u>		<u>Model: MVWC6ESWW1</u>	<u>Model: MVWC7ESWW0</u>	<u>Model: MVWC6ESWW0</u>
Inlet Hoses, 6 ft. (two braided hoses with one straight end and one 90 degree end and 4 rubber washers)		8212638RP	8212638RP	8212638RP
Hose Washers (package of 4)		285448A	285448A	285448A
Hose Screen (package of 2)		285452A	285452A	285452A

LEGEND:

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